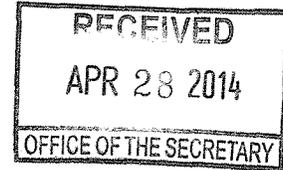


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15764



	:	
In the Matter of	:	DIVISION OF ENFORCEMENT'S
	:	MOTION FOR SUMMARY
GARY L. MCDUFF,	:	DISPOSITION
	:	
Respondent.	:	
	:	
	:	

The Division of Enforcement moves for summary disposition of the claims in the Order Instituting Administrative Proceeding (“OIP”) brought under Section 15(b) of the Securities Exchange Act of 1934 against Respondent Gary L. McDuff (“McDuff” or “Respondent”). The Division requests that a full collateral bar be imposed on McDuff because he has been enjoined from future violations of particular sections of the Securities Act of 1933, the Exchange Act of 1934, and the Investment Advisers Act of 1940s for his conduct in a securities fraud scheme.

I.
STATEMENT OF FACTS

1. On March 26, 2008, the Commission filed a civil action against McDuff, among others, in the United States District Court for the Northern District of Texas (Cause No. 3:08-CV-526-L). (Exhibit A, Complaint, at ¶ 1).¹ The Commission alleged that McDuff raised more than

¹ In support of this motion, the Division is attaching true and correct copies of the following documents from the civil injunctive action: **Exhibit A**, Complaint, filed March 26, 2008, Cause No. 3:08-CV-526-L; **Exhibit B**, “Notice of Special Appearance Non Acceptance of Offer to Contract Entitled ‘Summons’”, filed by Respondent May 6, 2008; **Exhibit C**, “Corrected Attachment to Notice of Special Appearance”, filed by Respondent May 12, 2008; **Exhibit D**, “Notice of Non Acceptance of Offer Return of Complaint”, filed by Respondent May 12, 2008; **Exhibit E**, Plaintiff’s Motion to Reopen Case, filed June 19, 2012; **Exhibit F**, Plaintiff’s Motion to Reissue Summons, filed June 19, 2012; **Exhibit G**, Order, entered August 20, 2012, granting motion to reopen case and to reissue summons to McDuff; **Exhibit H**, Summons issued as to Gary L. McDuff, dated August 21, 2012; **Exhibit I**, Proof of Service, showing service of summons and complaint on McDuff, dated August 23, 2012; **Exhibit J**, Plaintiff’s Motion for Default Judgment as to Defendant Gary L. McDuff and Brief in Support, filed February 19,

\$11 million from approximately 105 investors nationwide. The Complaint alleged that McDuff and two others he recruited organized an investment offer in an entity called Lancorp Financial Fund Business Trust (“Lancorp”). They represented that Lancorp would invest only in highly rated debt securities and that no commissions would be paid on the initial investments. Instead, Lancorp did not invest only in highly rated debt securities; it invested \$9.5 million of the \$11 million raised in a Ponzi scheme. It also secretly paid McDuff commissions. (*Id.*) The Commission alleged that McDuff’s deceptive conduct violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], and Sections 10(b) and 15(a)(1) of the Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78o(a)(1)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and that McDuff aided and abetted violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and (2)]. (Exhibit A, Complaint, at ¶ 20-45). In its Complaint, the Commission sought injunctive relief, disgorgement, plus prejudgment interest and civil monetary penalties.

2. The Commission made repeated attempts to complete service of process on McDuff. (Exhibit F, at p. 2). McDuff did receive the summons and copy of the Complaint. (Exhibits B, C, and D). Rather than acknowledge service, however, he filed a series of nonsensical documents, in which he declared his refusal to accept service and that he would “not consent” to the proceedings. (*Id.*) McDuff fled to Mexico. (Exhibit J, at p. 3).

Proof of Service, showing service of summons and complaint on McDuff, dated August 23, 2012; **Exhibit J**, Plaintiff’s Motion for Default Judgment as to Defendant Gary L. McDuff and Brief in Support, filed February 19, 2013; **Exhibit K**, Order granting Motion for Default Judgment, dated February 22, 2013; **Exhibit L**, Final Default Judgment, entered February 22, 2013. The Division requests that this Court take official notice of Exhibits A through L, in accordance with Rule of Practice 323. *See, e.g., In re Robert Radano*, Initial Dec. Rel. No. 310, 2006 SEC LEXIS 832, at *2 (March 24, 2006) (ALJ Mahony) (pursuant to Rule 323, court entered into evidence the complaint, order, and memorandum opinion in underlying SEC injunctive action).

Re: *In the Matter of Gary L. McDuff*

Division of Enforcement’s Motion for Summary Disposition

3. On June 11, 2009, McDuff was indicted in the United States District Court for the Eastern District of Texas on charges of conspiring to commit wire fraud and money laundering for the same conduct alleged in the Commission's Complaint. (Exhibit E, at p. 2; Exhibit F, at p. 3).

4. The Division attempted service on McDuff again in March 2010 in Morelos, Mexico, based on information received that McDuff was there. (Exhibit F, at p. 3).

5. On September 30, 2010, the Court entered an order administratively closing the case.² No further activity occurred in the civil case for the remainder of 2010 and 2011. (Exhibit G, at p. 2).

6. Between January 2, 2012 and April 20, 2012, McDuff filed another series of nonsensical documents, including but not limited to a "Tender for Setoff and a "Default in Dishonor". These are, of course, not recognized legal instruments in the United States legal system. (Exhibit F, at p. 3).

7. On or about May 25, 2012, McDuff was arrested in Mexico, and returned to the United States. He appeared in person for the Eastern District of Texas on June 15, 2012 for an arraignment and pretrial detention hearing. He was ordered to be detained in a corrections facility in advance of his criminal trial. (Exhibit G, at p. 4).³

8. On June 19, 2012, the Division filed a motion to reopen the civil case and a motion to reissue the summons for the civil complaint. (Exhibit E; Exhibit F). On August 20, 2012, the district court granted the motion. (Exhibit G). A new summons as to Gary McDuff was issued on August 21, 2012. (Exhibit H).

² McDuff, in his Answer to the OIP, repeatedly refers to the District Court's "closing" of the case without acknowledging that it was "administratively closed", and implies that such a closure is the same thing as a dismissal.

9. A private process server served McDuff in the Fannin County Jail on August 23, 2012. (Exhibit I).

10. Having been properly served, McDuff's answer date was September 13, 2012. (Exhibit J, at p. 4).

11. McDuff failed to file an answer. (Exhibit J, at p. 4).

12. On September 24, 2012, the District Clerk entered a default as to Gary L. McDuff. (Exhibit J, at p. 4).

13. On February 19, 2013, the Division filed a Motion for Default Judgment against Gary L. McDuff. (Exhibit J). The Division's motion stated that, in accordance with the law, the factual statements in the Division's Complaint should be taken as uncontested. (Exhibit J, at 8-13). The Division attached declarations and documents to support its claims for relief. (Exhibit J).

14. On February 22, 2013, based on the motion for default judgment and the attached evidence, the District Court entered an Order, granting the Commission's motion for default judgment. (Exhibit K). On that same date, the Court also entered Final Default Judgment. (Exhibit L). The Court found that McDuff violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Sections 10(b) and 15(a)(1) of the Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78o(a)(1)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and that he aided and abetted violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)] and enjoined McDuff from violating those sections of the federal securities laws. (Exhibit K). The Court also ordered McDuff to pay disgorgement of his ill-gotten gains of

³ McDuff was convicted on March 28, 2013 in the Eastern District of Texas. On April 14, 2014, he was sentenced to 240 months in the Bureau of Prisons.

\$136,336.18, plus prejudgment interest of \$65,004.37, and imposed a civil penalty of \$125,000. (Exhibit K; Exhibit L).

15. McDuff failed to appeal the Final Default Judgment of the Northern District of Texas.

16. On February 21, 2014, the Commission issued the OIP in this matter. The Division contends that it is in the public interest to impose the full collateral bar on McDuff because of the injunction that has been entered against him.

17. On or about April 14, 2014, Respondent filed his answer to the OIP. In his Answer, Respondent admitted that he “conditionally accepts” Division’s allegation that it obtained a valid Default Judgment on February 22, 2013” against him. Respondent’s “condition” is that the Division be “required to appear and show cause why it is not in supreme dishonor for violating its tacit agreement and acquiescence with the terms, conditions, and stipulations set forth in the record of settlement in case # PR-20111216-A” The rest of that paragraph in Respondent’s answer discusses a non-existent agreement, irrelevant facts, and legal theories not recognized in federal or administrative law.

18. Respondent has offered no evidence that a judgment for injunction has not been entered against him. Nor has Respondent presented any argument as to why he should not be barred from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

II. **ARGUMENT**

The OIP was filed to determine whether the Division’s allegations set forth in the OIP’s Section II are true and whether there are any defenses, and to determine what remedial action is in

the public interest. The Division's allegations in Section II are true, and no defenses to them exist. The Division further contends that imposing the full collateral bar against Respondent is in the public interest. Moreover, summary disposition of this matter is appropriate.

A. Summary Disposition Standard.

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323. 17 C.F.R. § 201.250(a).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See Gary M. Kornman*, Exchange Act Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14262-63, *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 & nn.21-24 (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *John S. Brownson*, 55 S.E.C. 1023, 1028 n.12 (2002), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003). *See also Anthony Chaisson*, Initial Dec. Rel. No. 589, at *2-3 (April 18, 2014) (ALJ Elliot).

B. Allegations of Section II Are True.

The facts alleged in Section II of the OIP are true. The Commission obtained a default judgment against McDuff on February 22, 2013, permanently enjoining him from violations of

certain sections of the Securities Act, the Exchange Act, and the Investment Adviser Act. (Exhibit L). The Commission's complaint, which was the basis for the entry of the injunction, alleged that McDuff had masterminded a scheme to create and operate an entity named Lancorp Financial Business Trust the offered particular investments to investors, but which McDuff misrepresented. (Exhibit A.) The proof of these two statements—that the Commission made certain allegations and that a permanent injunction was entered—are in Exhibits A and K, attached hereto.

Respondent has no defense to the two fundamental underlying facts. The Complaint alleges what it alleges. The permanent injunction was entered as a final judgment on February 22, 2013. Thus, Respondent has no defense to the Commission's consideration of whether remedial measures should be taken in the public interest.

Moreover, Respondent cannot collaterally attack the Final Default Judgment entered by the Court on February 22, 2013. Respondent had knowledge of the suit for more than four years, but never filed an answer. Default judgment was appropriate when he failed to file an answer. In addition, once the default judgment was entered, Respondent failed to appeal that judgment. The Final Judgment became final, and may not be attacked in a collateral administrative proceeding.⁴

⁴ *Robert Radano*, 2006 SEC LEXIS 832, at * 2; *see also In re Michael T. Studer*, Exchange Act Rel. No. 50411, 2004 SEC LEXIS 2135, at *6 (Sept. 20, 2004) (ALJ Mahony) (“[f]indings of fact and conclusions of law made in an injunctive action cannot be attacked in a subsequent administrative proceeding”); *In re Jerome M. Wenger*, Initial Dec. Rel. No. 192, 2001 SEC LEXIS 1933, at * 5 (Sept. 24, 2001) (ALJ Foelak) (“[a] respondent in a Commission administrative proceeding is not permitted to relitigate the merits of a proceeding that resulted in an injunction against him. He may not relitigate the findings of fact or conclusions of law made by the court in the underlying civil proceeding”); *In re Demitrios Julius Shiva*, Exchange Act Rel. No. 38389, 1997 SEC LEXIS 561, at * 5 (Mar. 12, 1997) (the Commission has “long refused to permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against the respondent”); *In re Joseph L. Lents*, Initial Dec. Rel. No. 267, 2004 SEC LEXIS 2939, at *4 n.3 (Dec. 15, 2004) (ALJ Foelak) (“[t]he Commission does not permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against the respondent”); *Joseph P. Galluzzi*, 2002 SEC LEXIS 2202, at *10 (August 23, 2002)(respondent is collaterally estopped from “challeng[ing] his injunction or criminal conviction in a subsequent administrative proceeding”); *In re Brett L. Bouchy and Richard C. Whelan*, Initial Dec. Rel. No. 209, 2002 SEC LEXIS 1743, at *24 n.3 (July 9, 2002) (ALJ Mahony) (“doctrine of collateral estoppel, as well as Commission case law, preclude Respondents from any attack in this proceeding on the validity of the findings and conclusions of law made by the District Court”).

C. Summary Disposition Is Appropriate.

Rule 250 of the Commission's Rules of Practice permits a party, with leave of the hearing officer, to move for summary disposition of any or all of the OIP's allegations if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." Pursuant to Rule 250, the Division was granted leave to file a motion for summary disposition at the Prehearing Conference on March 27, 2014.

In this matter, there is no genuine issue with regard to any material fact, and the Division is entitled to summary disposition as a matter of law. The Division pursued a civil injunctive action against McDuff (Exhibit A), and the District Court enjoined him from violating multiple federal securities statutes was entered on February 22, 2013. (Exhibit L). The Division is therefore entitled to summary disposition as a matter of law.

D. A Permanent Bar is the Remedial Action in the Public Interest.

The Commission has a statutory mandate to bar, if in the public interest, any person from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization if such person has been enjoined from violating federal securities laws.⁵

Respondent did not dispute that the Division filed a complaint against him. Respondent does not dispute that he was enjoined by the district court from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 10(b) and 15(a)(1) of the Exchange Act, and Rule 10b-5 thereunder, and from aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act. In the Final Default Judgment (Exhibit L), the District Court enjoined Respondent

⁵ 15 U.S.C. § 78o(b)(4) and (6); 15 U.S.C. § 80b-3(f).

from engaging in any fraudulent practice in connection with the purchase or sale of any security, required him to disgorge his ill-gotten gains, and imposed a penalty against him. Accordingly, McDuff has been enjoined from “any action, conduct, or practice” within the meaning of Exchange Act § 15(b)(6)(A)(iii) and Advisers Act 203(f).

The remaining issue is the appropriate remedial sanction for the fraudulent conduct. The only appropriate sanction in this case is a full collateral bar, which bars McDuff from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. In determining whether it is in the public interest to impose an associational bar, six factors are generally considered: (i) the egregiousness of the respondent’s actions; (ii) the isolated or recurrent nature of the infractions; (iii) the degree of scienter involved; (iv) the sincerity of the respondent’s assurances against future violations; (v) the respondent’s recognition of the wrongful nature of his conduct; and (vi) the likelihood that respondent’s occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981); *Robert Radano*, 2006 SEC LEXIS 832, at *14 (*Steadman* factors utilized in determining whether bar was in the public interest).⁶ The record in this matter makes clear that all of the *Steadman* factors favor barring McDuff from further association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

⁶ In determining whether injunctive relief is appropriate, the court should consider factors including: “the egregiousness of the defendant’s actions, the isolate or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.” *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981).

The Complaint, the Motion for Default Judgment, and the order granting the motion make clear the egregiousness of Respondent's actions in the fraudulent scheme, the recurrent nature of the infractions, and the degree of scienter involved. Moreover, Respondent, a twice-convicted felon, has never given any assurances against future violations or recognized the wrongful nature of his conduct. Respondent's failure to recognize the wrongfulness of his conduct presents a significant risk that, given the opportunity, he would commit further misconduct in the future. See *Michael J. Markowski*, 2001 SEC LEXIS 502, at *17 (March 20, 2001).⁷ Under settled precedents, the public interest requires a full collateral bar against Respondent, barring him from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Such an order is also necessary to protect the public from future misconduct.⁸

III. CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted, and that an order issue barring McDuff from association with an investment

⁷ See also *In re Ian L. Renert*, Initial Dec. Rel. No. 254, 2004 SEC LEXIS 1579, at * 8 (July 27, 2004) (ALJ Mahony) (in granting Division motion for summary disposition, court concluded that a "strong likelihood" exists for future violations in part because of respondent's "utter failure to recognize any wrongdoing"); *In re G. Bradley Taylor*, Initial Dec. Rel. No. 215, 2002 SEC LEXIS 2429, at * 36 (Sept. 24, 2002) (ALJ McEwen) (in barring defendant from associating with a broker or dealer, the court observed that the defendant denied any harm resulting from his conduct).

⁸ See *In re Ted Harold Westerfield*, Exchange Act Rel. No. 41126, 1999 SEC LEXIS 433 (March 1, 1999) (holding that bar was in the public interest against respondent who entered into a secret kickback scheme over seven-month period); *In re Michael I. Nnebe*, Initial Dec. Rel. No. 269, 2005 SEC LEXIS 11, at * 11-12 (Jan. 5, 2005) (ALJ Murray) (injunctions from future violations of the antifraud provisions have "especially serious implications for the public interest," and will "ordinarily" support a bar from "participation in the securities industry"); *In re Hunter Adams*, Exchange Act Rel. No. 48457, 2003 SEC LEXIS 2147, at *40 (Sept. 8, 2003) (ALJ Murray) (bar was in the public interest where "continued participation by Respondents in the securities industry would allow an opportunity for future violations"); *In re Michael D. Richmond*, Initial Dec. Rel. No. 224, 2003 SEC LEXIS 448, at * 6-7 (Feb. 25, 2003) (ALJ Mahony) (bar was in the public interest where conduct was egregious and respondent still does not acknowledge the wrongful nature of his conduct).

adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization pursuant to Section 15(b) of the Exchange Act.

April 25, 2014

Respectfully submitted,

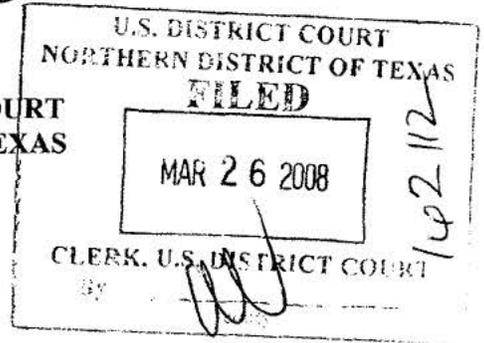
A handwritten signature in black ink, appearing to read "Janie L. Frank", written over a horizontal line.

JANIE L. FRANK
Division of Enforcement
Securities and Exchange Commission
Fort Worth Regional Office
801 Cherry Street, 18th Floor
Fort Worth, Texas 76102
(817) 978-6478
(817) 978-4927 *fax*

EXHIBIT A

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Civil Action No.

GARY L. McDUFF,
GARY L. LANCASTER, and
ROBERT T. REESE,

3-08 CV-526-L

Defendants.

COMPLAINT

The United States Securities and Exchange Commission ("Commission") files this Complaint against Gary L. McDuff, Gary L. Lancaster and Robert T. Reese and would respectfully show the Court as follows:

SUMMARY

1. The Commission files suit against Gary L. McDuff ("McDuff"), Gary L. Lancaster ("Lancaster") and Robert T. Reese ("Reese") for their respective roles in a fraudulent, unregistered offering through which they raised over \$11 million from approximately 105 investors nationwide. McDuff, the mastermind behind the fraud and a convicted felon, recruited Lancaster, a former registered representative, to be the "face" of the offering, which was conducted through the Lancorp Financial Fund Business Trust ("Lancorp Fund"). McDuff also recruited Reese, his long-standing partner, to be the primary salesman for the investment. The Lancorp Fund's offering document, a materially false and misleading Private Placement Memorandum ("PPM"), stated that the Lancorp Fund would invest only in highly rated debt

securities; Lancaster, as Trustee, would be paid a maximum of 50 basis points a quarter; and no commissions would be paid on initial investments. Unfortunately for investors, the defendants adhered to none of these restrictions.

2. As a result of facts learned in connection with its action styled *Securities and Exchange Commission v. Megafund Corp., et al.*, Civil Action No. 3-05-CV-1328-L (N.D. Texas) (hereinafter "*Megafund*"), involving a fraudulent "high yield" Ponzi scheme, the Commission learned that \$9.3 million of over \$14 million invested with Megafund came from the Lancorp Fund. Examining the operation of the Lancorp Fund leads to the inescapable conclusion that the defendants engaged in fraud and deception. Lancorp Fund assets were supposed to be invested only in highly-rated debt securities, yet Lancaster and McDuff agreed to have the Lancorp Fund invest millions in the Megafund Ponzi scheme. The Lancorp Fund was not allowed to pay commissions on investments in the fund, yet Lancaster paid out over \$300,000 in covert commissions to McDuff and Reese. Finally, the Lancorp Fund was to distribute investment profits to investors and only allowed to pay Lancaster 50 basis points minus expenses per quarter, yet Lancaster paid himself over \$336,000 by establishing an undisclosed side agreement to share in the Megafund Ponzi payments without ever distributing "profits" to investors.

3. In the interest of protecting the investing public from further such unscrupulous conduct, the Commission files suit against the Defendants seeking injunctive relief, disgorgement of ill-gotten gains, prejudgment interest, and civil penalties.

JURISDICTION

4. The Court has jurisdiction over this action pursuant to Section 20(d) and 22(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77t(d) and § 77v(a)], Sections

21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e) and 78(aa)] and Section 214 of the Investment Advisers Act of 1940 (the "Investment Advisers Act") [15 U.S.C. § 80b-14]. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Northern District of Texas.

DEFENDANTS

5. **Gary L. McDuff** ("McDuff"), age 52, is a former resident of Deer Park, Texas. McDuff has never been associated with a registered broker dealer or investment adviser. In 1994, McDuff was convicted of two counts of money laundering and was sentenced to 36 months in federal prison. McDuff refused to appear for testimony in response to an investigative subpoena issued by the Commission and was the subject of a subpoena enforcement action, *SEC v. Gary Lynn McDuff*, Misc. Action No. 406-MC-Y (N.D. Tex. filed March 10, 2006). On information and belief McDuff currently resides in Mexico.

6. **Gary L. Lancaster** ("Lancaster"), age 54, is a resident of Vancouver, Washington and the control person of the Lancorp Financial Fund Business Trust and Lancorp Financial, LLC. Lancaster was a registered representative, most recently with American Fidelity Securities, Inc. from March 2006 through July 2006. Previously, Lancaster was registered with Sloan Securities Corporation from July 2005 through October 2005 and with The O.N. Equity Sales Company from March 2004 through January 2005. Lancaster has held Series 6, 7, 63, and 65 licenses. On September 5, 2006, the NASD barred Lancaster from association with any NASD member in any capacity.

7. **Robert T. Reese** ("Reese"), age 65, is a resident of Carmel, California and a licensed insurance agent. In 2004, the California Department of Corporations entered a Desist

and Refrain Order against Reese for acting as an unregistered broker selling unregistered securities. Reese has never been associated with a registered broker, dealer or investment adviser.

RELATED ENTITIES

8. Lancorp Financial Fund Business Trust (previously referred to as the "Lancorp Fund") was a private placement fund that Lancaster organized as a Nevada domestic business trust. Lancaster began soliciting investor funds for the trust in 2003. Lancaster was the lone signatory on all Lancorp Fund bank accounts. The State of Nevada revoked the Lancorp Fund's registration in 2006. Lancorp Financial Group, LLC (previously referred to as "Lancorp LLC"), incorporated in Oregon in 1996, was established to be the financial adviser for a private placement fund, and ultimately, served in this capacity for the Lancorp Fund. Lancaster was the sole principal and control person of Lancorp LLC. The Oregon Secretary of State revoked Lancorp LLC's registration in 2006. Pursuant to an agreement between the *Megafund* court-appointed receiver and Lancaster, the Lancorp Fund and Lancorp LLC became part of the *Megafund* receivership in January of 2006.

BACKGROUND FACTS

9. In the fall of 2000, Lancaster was working as a bank officer. In the course of his duties, Lancaster was introduced to McDuff, who was looking for a loan. Ultimately, the bank elected not to do business with McDuff because of his 1994 conviction for money laundering. McDuff, however, convinced Lancaster that he was innocent of any wrong-doing. Lancaster later went into business with McDuff, helping to manage investments with McDuff. In March 2003, at the direction of McDuff, Lancaster created the Lancorp Fund.

10. The Lancorp Fund's private placement offering began on March 17, 2003. The Private Placement Memorandum, previously referred to as the "PPM" for the Lancorp Fund was prepared by an attorney in Houston who had a prior existing relationship with McDuff. Once he provided Lancaster with the PPM, McDuff supplied Lancaster with a "broker" to sell the investment – Robert T. Reese, an insurance agent in Carmel, California.

11. According to the PPM, the Lancorp Fund was an "unregistered closed-end non-diversified management investment company" that would "not be managed like a typical closed-end investment company." Instead, the Lancorp Fund would be internally managed by the trustees (i.e., Lancaster) and not by a separate investment adviser. The PPM stated that the Lancorp Fund's investment strategy involved the "issuance of Forward Commitments" to participate in transactions relating to debt securities with the goal of "maximizing the protection of investors' funds." Specifically, the PPM stated that the Lancorp Fund was only allowed to invest in original issue debt securities rated at least "A+" by Standard & Poor's Corporation or "A1" by Moody's Investor Service. Additionally, the PPM falsely stated that that Lancaster was "an investment adviser registered with the Commission under the Investment Advisers Act of 1940, as amended."

12. The PPM set forth that no commissions would be paid on the sale of investor shares, and that Lancaster, as trustee of the Lancorp Fund, would be compensated in an amount equal to .5% of the fund's deposits (i.e., assets under management) minus expenses. The PPM also set forth that any remaining quarterly income would be distributed as "investor returns" to the fund's shareholders. Application materials asked potential investors whether they were accredited, and if so to "check the box." Investors were not provided with any financial information, audited or otherwise.

13. The Lancorp Fund was offered to investors nationwide through a general solicitation. The Lancorp Fund raised approximately \$11 million from 105 investors (including at least 37 unaccredited investors). The majority of the investors in the Lancorp Fund were referred to the Lancorp Fund by Reese, with the remainder coming from McDuff. Reese advertised the Lancorp Fund investment in at least one investor periodical, and even created his own "lead sheets" that he sent to potential investors. The lead sheets borrowed some information from the Lancorp Fund PPM, but also contained statements that Reese simply fabricated. According to the lead sheets, investor funds would be deposited in an A+ or higher rated US Bank; security for the deposits, which guaranteed protection of 100% of an investor's principal, would be provided by US insurers rated A or higher by AM Best Company; investments in the Lancorp Fund were safe and would have no sales charges; and the trustee fee would be deferred until a minimum return was paid to investors.

14. In January 2005, McDuff introduced Lancaster to Leitner and the Megafund investment opportunity. McDuff showed Lancaster the Megafund offering documents, which set forth that investor funds would be placed in "an account at a major U.S. Brokerage firm" where an unnamed "Trader" would engage in "arbitrage" transactions involving the purchase and sale of "Treasury bills, certificates of deposit, stocks, bonds, securities and derivatives of such on margin or otherwise . . . and Tri-Party Repurchase Agreement transactions." The Megafund materials went on to promise that investors would receive a "ten percent profit" per month and that their principal investment would never be at risk. After hearing a pitch on Megafund, and at McDuff's recommendation, on February 8, 2005 Lancaster directed the Lancorp Fund to invest \$5 million in the Megafund offering regardless that such an investment was clearly outside the investment parameters allowed by the Lancorp Fund PPM.

15. Lancaster initially told McDuff and Reese that the Lancorp Fund could not compensate them for referring investors to the fund for two reasons: the Lancorp Fund PPM explicitly stated that no commissions would be paid, and Lancaster knew that McDuff and Reese were not registered representatives and therefore could not receive transaction-based compensation. Shortly after the Lancorp Fund's initial investment in Megafund, however, McDuff devised a plan to circumvent the Lancorp Fund's proscription on the payment of commissions.

16. McDuff caused an entity he controlled named MexBank S.A. de C.V. ("MexBank") to enter into a "joint-venture" profit-sharing arrangement with Lancorp Financial Group LLC (previously described as "Lancorp LLC"), which Lancaster controlled. Lancorp LLC also entered into an agreement with the Lancorp Fund, which provided that Lancorp LLC would act as an investment adviser to the Lancorp Fund. Lancaster executed the agreement for both parties. The joint-venture agreement set forth that all monthly gross profits payable by Megafund to the Lancorp Fund would be divided 64.8% to Lancorp LLC and 35.2% to MexBank. The agreement was dated March 17, 2005, but stated that the effective date was February 2, 2005, in order to "memorialize a prior understanding of the division of earnings derived from investments in the Megafund Corporation." None of this was ever disclosed to Lancorp Fund investors. As a result, when Megafund started making "profit" payments, which were in reality Ponzi payments, to the Lancorp Fund, McDuff and Reese were able to receive compensation through MexBank for bringing investors to the Lancorp Fund.

17. Between June 2004 and May 2005, Megafund raised over \$14 million from investors, including over \$9.3 million from the Lancorp Fund. Megafund never deposited investor funds with a U.S. brokerage firm as represented to investors. Instead, it transferred

approximately \$11 million of investor funds to an offshore bank account controlled by James Rumpf. Approximately \$9.5 million of those funds were transferred to a U.S. bank account controlled by a convicted felon named Bradley Stark ("Stark"). Stark's bank records revealed that he was operating a separate Ponzi scheme, and that at the time the Commission filed the *Megafund* emergency action, he had transferred approximately \$2.6 million in Ponzi payments from his scheme back to Megafund.

18. On March 23, 2005, Megafund made a \$500,000 "profit" payment to the Lancorp Fund. Lancaster re-invested some of those funds with Megafund, transferred \$138,229 through Lancorp LLC to a personal account, and transferred \$128,437 to MexBank. On April 26, 2005, Megafund made a second \$500,000 "profit" payment to the Lancorp Fund. This time, Megafund sent \$175,835 to MexBank directly, and \$324,165 to the Lancorp Fund. Lancaster transferred \$198,000 from the Lancorp Fund to his personal account, and re-invested the remaining \$126,165 with Megafund.

19. By the time the Commission filed its emergency action against Megafund on July 5, 2005, Lancaster had kept \$336,229 for himself and Reese and McDuff had divided \$304,272 through the undisclosed compensation arrangement. McDuff transferred \$45,792 to Reese from the MexBank account and kept the remaining \$258,480 for himself. No money or profits were distributed to Lancorp Fund investors.

CLAIMS

FIRST CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

20. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint by reference as if set forth *verbatim*.

21. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

22. As a part of and in furtherance of their scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in Paragraphs 1 through 19 above.

23. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

24. By reason of the foregoing, Lancaster, McDuff and Reese have violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM
Violations of Section 17(a) of the Securities Act

25. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint by reference as if set forth *verbatim*.

26. Defendants, directly or indirectly, singly, in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

27. As part of and in furtherance of this scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material fact and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those statements and omissions set forth in paragraph 1 through 19 above.

28. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness with regard for the truth. Defendants were also negligent in their actions regarding the representations and omissions alleged herein.

29. By reason of the foregoing, Lancaster, McDuff and Reese have violated, and unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM
Violations of Section 5(a) and 5(c) of the Securities Act

30. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint by reference as if set forth *verbatim*.

31. Defendants, directly or indirectly, singly and in concert with others, have been offering to sell, selling and delivering after sale, certain securities, and have been, directly and

SEC v. Gary L. Lancaster, et al.

COMPLAINT

Page-10

indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

32. As described in paragraphs 1 through 19, the investments were offered and sold to the public through a general solicitation of investors. No registration statements were ever filed with the Commission or otherwise in effect with respect to these securities.

33. By reason of the foregoing, Lancaster, McDuff and Reese have violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

FOURTH CLAIM
Violations of Section 15(a)(1) of The Exchange Act

34. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint as if set forth *verbatim*.

35. At the times alleged in this Complaint, Defendants have been in the business of effecting transactions in securities for the accounts of others.

36. Defendants made use of the mails and of the means and instrumentalities of interstate commerce to effect transactions in and to induce or attempt to induce the purchase of securities.

37. At the times alleged in this Complaint Defendants were not registered with the Commission as a broker or dealer, as required by Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

38. By reason of the foregoing, Lancaster, McDuff and Reese have violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. §78o(a)(1)].

FIFTH CLAIM
(Against Lancaster)
Violations of Sections 206(1) and 206(2) of the Investment Advisers Act

39. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint as if set forth *verbatim*.

40. Lancaster, directly and indirectly, by use of the mails and means and instrumentalities of interstate commerce, while acting as an investment adviser, intentionally, knowingly or recklessly:

(a) employed devices, schemes and artifices to defraud clients or prospective clients; and

(b) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients.

41. By reason of the foregoing, Lancaster violated and, unless enjoined, will continue to violate Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§80b-6(1) and (2)].

SIXTH CLAIM
(Against McDuff and Reese)
Aiding and Abetting
Violations of Sections 206(1) and 206(2) of the Investment Advisers Act

42. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint as if set forth *verbatim*.

43. Lancaster, directly and indirectly, by use of the mails and means and instrumentalities of interstate commerce, while acting as an investment adviser, intentionally, knowingly or recklessly:

(a) employed devices, schemes and artifices to defraud clients or prospective advisory; and

(b) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients.

44. McDuff and Reese knowingly provided substantial assistance to Lancaster in his violations of Sections 206(1) and 206(2) of the Investment Advisors Act.

45. By reason of the foregoing, McDuff and Reese aided and abetted violations of, and unless enjoined, will continue to aid and abet violations of Sections 206(1) and 206(2) of the Investment Advisors Act [15 U.S.C. §§80b-6(1) and (2)].

RELIEF REQUESTED

The Commission seeks the following relief:

46. An order of the Court permanently enjoining the defendants, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], and Sections 10(b) and 15(a)(1) of the Exchange Act, [15 U.S.C. § 78j(b) and § 78o(a)(1)], and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

47. An order of the Court permanently enjoining the Lancaster, his agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§80b-6(1) and (2)].

48. An order of the Court permanently enjoining the McDuff and Reese, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from aiding and abetting future violations of Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§80b-6(1) and (2)].

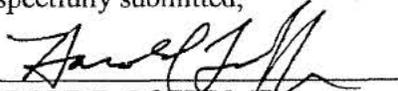
49. An order of the Court directing Defendants to disgorge an amount equal to the funds and benefits each obtained illegally as a result of the violations alleged, plus prejudgment interest on that amount.

50. An order of the Court directing defendants to pay civil monetary penalties in an amount determined as appropriate by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(e) of the Investment Advisers Act [15 U.S.C. § 80b-9(e)] for their violations of the federal securities laws as alleged herein.

51. All further relief as the Court may deem just and proper.

DATED: March 26, 2008

Respectfully submitted,



HAROLD R. LOFTIN, JR.

Texas Bar No. 12487090

U.S. Securities and Exchange Commission

Burnett Plaza, Suite 1900

801 Cherry Street, Unit #18

Fort Worth, TX 76102-6882

(817) 978-6450

(817) 978-4927 (fax)

ORIGINAL
CIVIL COVER SHEET 3-08 CV-526-L

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I.(a) PLAINTIFF

SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS

GARY L. McDUFF, GARY L. LANCASTER and ROBERT T. REESE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

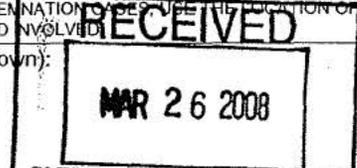
County of Residence of First Listed Defendant: Country of Mexico (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEY (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

HAROLD R. LOFTIN, JR.
U.S. Securities & Exchange Commission, Burnett Plaza, Ste. 1900,
801 Cherry Street, Unit #18, Fort Worth, TX 76102-6882
(817) 978-6450

ATTORNEYS (If known):



II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTY (For Diversity Cases Only)

- Citizen of This State: 1 PTF, 1 DEFENDANT
- Citizen of Another State: 2 PTF, 2 DEFENDANT
- Citizen or Subject of a Foreign Country: 3 PTF, 3 DEFENDANT
- Incorporated or Principal Place of Business in This State: 4 PTF, 4 DEFENDANT
- Incorporated and Principal Place of Business in Another State: 5 PTF, 5 DEFENDANT
- Foreign Nation: 6 PTF, 6 DEFENDANT

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copy rights <input type="checkbox"/> 830 Patient <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, [15 U.S.C. § 77e(a), 77e(c) and 77q(a)] ("Securities Act") and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934, [15 U.S.C. §78j(b) and 78o(a)] ("Exchange Act"), and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND YES NO

VIII. RELATED CASE(S) (See Instructions):

IF ANY

JUDGE Sam A. Lindsay DOCKET NUMBER 3-05CV1328-L

DATE 3/26/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

Receipt # AMOUNT APPLYING IFF JUDGE MAG. JUDGE

EXHIBIT B

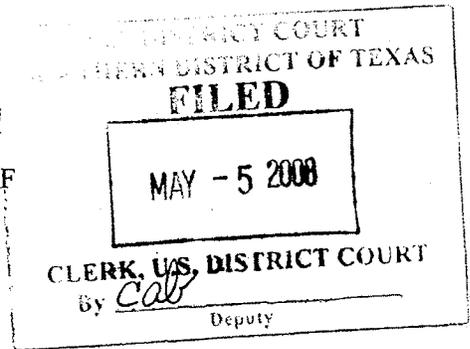
L
ORIGINAL

From: Gary-Lynn: McDuff, a man,
c/o Juan Carlos Harris
Barranca del Muerto No. 261 B
Colonia San Jose Insurgentes
C.P. 03900, Mexico City, Mexico DF

To: Karen Mitchell, Clerk
1100 Commerce St., Room 1452
Dallas, Texas 75242
and

Harold R Loftin, Jr
SEC Fort Worth Regional Office
801 Cherry St
Suite 1900
Fort Worth, TX 76102
and

Sam A. Lindsay, Judge
c/o 1100 Commerce St., Room 1452
Dallas, Texas 75242
Respondents



Reference: Case Number: 3-08CV-526-L
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

NOTICE OF SPECIAL APPEARANCE
NON ACCEPTANCE OF OFFER TO CONTRACT ENTITLED
"SUMMONS" IN Case No.3-08CV-526-L,
FILED ON March 26, 2008
NON CONSENT TO THESE PROCEEDINGS,
NON CONSENT TO ACT AS SURETY
080502

For the Record: EQUALITY UNDER THE LAW IS PARAMOUNT AND MANDATORY

NOTICE TO AGENT IS NOTICE TO PRINCIPAL
NOTICE TO PRINCIPAL IS NOTICE TO AGENT

I, Gary-Lynn: McDuff, a man, hereinafter I, me, my or mine am competent to handle my own commercial affairs. I am, however, not trained in the law or the procedures of law, nor have I been able, as of this date, to retain competent assistance of counsel to advise me in this matter.

I am aware of the attached SUMMONS, accompanying a complaint signed by attorney Harold R Loftin, Jr, attorney for US Securities & Exchange Commission, 3-08CV-526-L UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS (DALLAS).

I have not yet been served with the SUMMONS and do not waive any right, privilege, or defense.

I declare the SUMMONS, hereinafter "offer" to be an offer on the part of the Clerk of Court of the UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS (DALLAS), (copy attached) to be an offer to arbitrate a private dispute.

Notice is given that the SUMMONS is returned with the following statement inscribed on it's face: I DO NOT ACCEPT THIS OFFER, I DO NOT CONSENT TO THESE PROCEEDINGS, I DO NOT CONSENT TO ACT AS SURETY with my signature.

I declare Case No. 3-08CV-526-L, and any claim and associated responses, to be in commerce.

I do not give Harold R Loftin, Jr, attorney for US Securities & Exchange Commission, or the UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS (DALLAS), license to make any legal determinations for me, nor is it my intention ever to do so without proof of obligation to do so.

I declare attorney Harold R Loftin, Jr, attorney for US Securities & Exchange Commission, Karen Mitchell, clerk, and Sam A Lindsey, judge, to be legally incompetent as regards this matter.

I declare that the UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS (DALLAS) is foreign to my venue and jurisdiction.

At no time in this or any future negotiations do I agree to give to anyone license to make legal determinations for me, including but not limited to Karen Mitchell, hereinafter "Clerk", and Sam A. Lindsay, hereinafter "Judge", together, hereinafter "Court" or Harold R Loftin, Jr, attorney for US Securities & Exchange Commission, without a written Power of Attorney, signed by me, in red ink and sealed by me with a red thumb print stating with particularity the limits of that Power of Attorney. Lest there be any doubt, I hereby fire the Court and Harold R Loftin, Jr, attorney for US Securities & Exchange Commission.

Notice is given to UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS (DALLAS), and Harold R Loftin, Jr, attorney for US Securities & Exchange Commission that the SUMMONS, accompanying the referenced COMPLAINT, is rejected timely and in accordance with all applicable rules, without dishonor, for valid reasons including, but not limited to (1) An inherent conflict of interest where the proposed judge, attorney, and clerk are purported employees of the principal in this dispute. and (2) The lack of evidence, in the record, that the Court is a court of strictly judicial character, (3) Lack of evidence, in the record, that the Court



agrees only be bound by the Constitution for the united States and constitutionally compliant laws, rules, and regulations.

Notice is given to the Court that the offer to contract, entitled SUMMONS IN CASE No. 3-08CV-526-L is hereby "justifiably refused" for cause.

Demand is made that the Court meet the following conditions, and provide the following information, prior to any further attempt to establish a contract with me, or prosecute this case,

1. The Court is commanded to provide me with the foundational documents containing my valid signature that would mandate that I contract with the Court to resolve this dispute.
2. The Court is commanded to provide the rule, law, statute, regulation, code or contract that it is willing to swear to under penalty of perjury to be true, correct, and complete, and not misleading, that applies to me and that would obligate me to accept the Court's offer to arbitrate this private dispute and/or perform according to the above referenced offer to contract entitled SUMMONS, including the Court's right to impose such a duty or a sanction on me.
3. The Court is commanded to provide the evidence and the conclusions of law upon which the Court would base its' legal determinations as set forth in 1 and 2 above.
4. The Court is commanded to establish its' right to communicate with me by filling out the attached ADMINISTRATIVE NOTICE AND DEMAND FOR IDENTIFICATION AND CREDENTIALS QUO WARRANTO for Karen Mitchell, Clerk of Court, and Sam A Lindsay, Judge, signed under penalty of perjury, and thereafter timely returning the fully executed document to me.
5. The Court is commanded to provide me with a certified copy of any contracts the court presumes to be in effect between me and the Court.
6. The Court is commanded to produce its' specific authorization of law to exercise the Court's office outside of the District of Columbia e.g. in Texas.
7. The Court is commanded to bring forth evidence of a competent witness who is willing to swear under penalty of perjury that he/she/they have been injured by me with a proffer of evidence he/she/they are willing to swear to as true, correct, complete and not misleading, along with evidence that I have refused to make him/her/them whole or that I have been given the opportunity to do so.
8. The Court is commanded to identify the Real Party in Interest in this case.
9. The Court is commanded to provide evidence from the record of the Plaintiff's standing to sue.

The Court is given Notice and fair warning, that I exercise my common law right not to be compelled to the performance under any contract that I have not entered into knowingly, willingly, and voluntarily and that contains my valid signature.

The Court is commanded to respond to me at my above referenced address and location, in my venue, within 10 days of receipt of this document to (1) Request an extension of time, which will



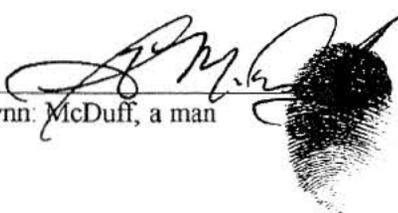
be granted upon a show of cause why such extension is necessary. (2) Perform as commanded in items 1-9 above or show cause why you should not.

Should the Court fail to respond timely or perform as commanded within 10 days from receipt of this document, or request an extension of time as commanded, it is deemed that:

1. The Court agrees to immediately close this instant case with prejudice
2. The Court agrees that there is no evidence of a rule, law, statute, regulation, code or contract that applies to me that would mandate, obligate, or create a legal duty for me to accept the Court's offer to arbitrate this private dispute and/or perform according to the contract offer entitled SUMMONS referenced above, or of the Court's right to impose a duty or a sanction on me.
3. The Court agrees that the Court's failure to fill out and return to me the certified documents requested in the attached ADMINISTRATIVE NOTICE AND DEMAND FOR IDENTIFICATION AND CREDENTIALS QUO WARRANTO for Karen Mitchell, Clerk of Court, Northern District of Texas (Dallas) sets for the record, as ultimate fact(s) that the Court is acting without authority, office, and/or capacity as an officer, official, or agent for any original jurisdiction non-corporate governmental "United States of America" pursuant to the Constitution for the United States of America, Anno Domini 1789) with Articles of Amendment Anno Domini 1791.
4. The Court agrees that there is no competent witness in the record willing to provide evidence that he has been injured and that I have refused to make him whole.
5. The Court agrees that there are no contracts in effect between me and the Court.
6. The Court agrees that it has no specific authorization of law to exercise the Court's office outside of the District of Columbia e.g. in Texas.
7. The Court agrees that there is no Real Party in Interest in this case.
8. The court agrees that the Plaintiff has no standing to sue.
9. The Court agrees that the Court's failure to respond, after receipt of a valid, verified notice of non response, constitutes agreement with items 1-8 above, a judgment in estoppel and bar to a plea, and said judgment is enforceable by any judicial or non judicial remedy available to me in any jurisdiction.

Dated: May 2, 2008

As I say it, so it is done.

Gary-Lynn McDuff, a man 

PROOF OF SERVICE

I, the undersigned, hereby certify and affirm that I served the following original document:

NOTICE OF SPECIAL APPEARANCE NON ACCEPTANCE OF OFFER TO CONTRACT ENTITLED "SUMMONS" IN Case No.3-08CV-526-L, FILED ON March 26, 2008, NON CONSENT TO THESE PROCEEDINGS, NON CONSENT TO ACT AS SURETY 080502 signed by Gary-Lynn McDuff on May 2, 2008 with the following attachments:

1. A copy of SUMMONS with the words "I DO NOT ACCEPT THIS OFFER, I DO NOT CONSENT TO THESE PROCEEDINGS, AND I DO NOT CONSENT TO ACT AS SURETY" inscribed on the face with original signature of Gary-Lynn McDuff dated May 2, 2008

2. ADMINISTRATIVE NOTICE AND DEMAND FOR IDENTIFICATION AND CREDENTIALS QUO WARRANTO FOR Karen Mitchell, and Sam A. Lindsay

by causing said documents be sent by Federal Express, with delivery confirmation and addressed to the following person/entity:

Karen Mitchell, Clerk
1100 Commerce St., Room 1452
Dallas, Texas 75242

Fed Ex # 865791489226

Including self addressed prepaid envelope for Return of 1 conformed copy

and
Sam A. Lindsay, Judge
1100 Commerce St.,
Dallas, Texas 75242

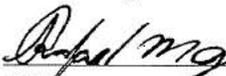
Fed Ex # 865791488860

and
Harold R Loftin, Jr
SEC Fort Worth Regional Office
801 Cherry St
Suite 1900
Fort Worth, TX 76102

Fed Ex# 865791489215

Dated: May 2, 2008

Affirmed by:



name
address




AO 440 (Rev. 10/93) Summons in a Civil Action

United States District Court
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

SUMMONS IN A CIVIL ACTION

V.

GARY L. McDUFF,
GARY L. LANCASTER, and
ROBERT T. REESE

CASE NUMBER:

3-08 CV-526-L

Defendants.

TO: (Name and address of defendant)

GARY L. McDUFF
Galena No. 29
Col. Acapantzingo
Curanavaca, Morelos 62200
MEXICO

**I DO NOT ACCEPT THIS OFFER
I DO CONSENT TO THESE PROCEEDINGS
I DO NOT CONSENT TO ACT AS SURETY**

Dated: May 2, 2008

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's (Attorneys (NAME AND ADDRESS))

Harold R. Loftin, Jr. **Gary-Lynn: McDuff, a man**
SECURITIES AND EXCHANGE COMMISSION, Fort Worth District Office
801 Cherry Street, Suite 1900, Unit #18
Fort Worth, TX 762018-6819

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK OF COURT

CLERK

(BY) DEPUTY CLERK

MAR 2 6 2008

MAR 2 6 2008

DATE

**ADMINISTRATIVE NOTICE AND DEMAND FOR
IDENTIFICATION AND CREDENTIALS
QUO WARRANTO
for Sam A. Lindsay
USDC Judge**

This "Good Faith Presentment" is presented to **Sam A. Lindsay** for purposes of obtaining full disclosure of identification under and determining under what authority, office, and capacity the Recipient appears to approach the presenter.

This Administrative Notice, duly served on you, and deemed actual, constructive and sufficient notice, requires that you provide to the presenter, within ten days from the time of presentment, copies of the below listed documents, said copies to be certified and exemplified in accordance with 1 Stat 122 and 2 Stat 298 and FRCP Rule 902, under Article [the] VI of the Constitution for the United States of America, Anno Domini 1789, with Articles of Amendment Anno Domini 1791.

1. Oath of Office (Title 5 U.S.C. §3331)
2. Officer Affidavit (Title 5 U.S.C. §3332) and/or
3. Employee Affidavit (Title 5 U.S.C. §3333)
4. Surety Bond (Title 5 U.S.C. §2901 & D.C. Code 11-7040)
5. Registration (Title 22 U.S.C. §611 and §612)
6. Authorization of law to exercise your office outside of the District of Columbia (U.S.C Title 4 Sec 72)

Your failure, refusal, and or neglect to fully and timely comply will set, for the record, as ultimate fact(s) that you are acting without authority, office, and/or capacity as an officer, official, or agent for any original jurisdiction non-corporate governmental "United States of America" pursuant to the Constitution for the United States of America, Anno Domini 1789) with Articles of Amendment Anno Domini 1791, to approach presenter.

It is presumed and/or assumed that it is your duty and fiduciary obligation to provide the above information, in a timely and truthful manner.

I do not give you license to make any legal determinations for me.

Silence equates with fraud/dolus.

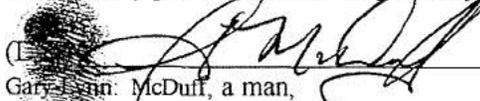
This administrative Notice and Demand is not intended to hinder, delay, obstruct, intimidate, or in any way threaten anyone, but is simply a means of invoking recipient's duty to act pursuant to the above quoted statutes, which apply to the recipient in recipient's official capacity, for lawful disclosure of vitally needed information.

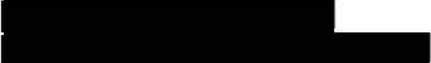
Should recipient not timely and fully comply, it will be deemed, by tacit procuracy, your implied consent to a challenge, pursuant to a petition for a Writ of Quo Warranto (63 AmJur 2nd 5.441), to your authority, in a court of correct jurisdiction.

Any further contact, instructions, directions, documents transferred from you, to me by means of postal delivery or electronic or other means, leaves you open for prosecution, by the proper authorities, for mail fraud and/or wire fraud, until such time as you have properly and fully identified yourself, pursuant to the above quoted statutes.

If you have any objections or competent reasons as to why you cannot comply with this Administrative Notice you must put them in writing, stating all supporting evidence, signed by you within the time herein stated.

Respectfully presented this 2st day of May, 2008 A.D.

(1)  _____ In Original Jurisdiction
Gary Lynn McDuff, a man,
c/o Juan Carlos Harris

**ADMINISTRATIVE NOTICE AND DEMAND FOR
IDENTIFICATION AND CREDENTIALS
QUO WARRANTO
for Karen Mitchell
Clerk of Court**

This "Good Faith Presentment" is presented to **Karen Mitchell** for purposes of obtaining full disclosure of identification under and determining under what authority, office, and capacity the Recipient appears to approach the presenter.

This Administrative Notice, duly served on you, and deemed actual, constructive and sufficient notice, requires that you provide to the presenter, within ten days from the time of presentment, copies of the below listed documents, said copies to be certified and exemplified in accordance with 1 Stat 122 and 2 Stat 298 and FRCP Rule 902, under Article [the] VI of the Constitution for the United States of America, Anno Domini 1789, with Articles of Amendment Anno Domini 1791.

1. Oath of Office (Title 5 U.S.C. §3331)
2. Officer Affidavit (Title 5 U.S.C. §3332) and/or
3. Employee Affidavit (Title 5 U.S.C. §3333)
4. Surety Bond (Title 5 U.S.C. §2901 & D.C. Code 11-7040)
5. Registration (Title 22 U.S.C. §611 and §612)
6. Authorization of law to exercise your office outside of the District of Columbia (U.S.C. Title 4 Sec 72)

Your failure, refusal, and or neglect to fully and timely comply will set, for the record, as ultimate fact(s) that you are acting without authority, office, and/or capacity as an officer, official, or agent for any original jurisdiction non-corporate governmental "United States of America" pursuant to the Constitution for the United States of America, Anno Domini 1789) with Articles of Amendment Anno Domini 1791, to approach presenter.

It is presumed and/or assumed that it is your duty and fiduciary obligation to provide the above information, in a timely and truthful manner.

I do not give you license to make any legal determinations for me.

Silence equates with fraud/dolus.

This administrative Notice and Demand is not intended to hinder, delay, obstruct, intimidate, or in any way threaten anyone, but is simply a means of invoking recipient's duty to act pursuant to the above quoted statutes, which apply to the recipient in recipient's official capacity, for lawful disclosure of vitally needed information.

Should recipient not timely and fully comply, it will be deemed, by tacit procuracy, your implied consent to a challenge, pursuant to a petition for a Writ of Quo Warranto (63 AmJur 2nd 5.441), to your authority, in a court of correct jurisdiction.

Any further contact, instructions, directions, documents transferred from you, to me by means of postal delivery or electronic or other means, leaves you open for prosecution, by the proper authorities, for mail fraud and/or wire fraud, until such time as you have properly and fully identified yourself, pursuant to the above quoted statutes.

If you have any objections or competent reasons as to why you cannot comply with this Administrative Notice you must put them in writing, stating all supporting evidence, signed by you within the time herein stated.

Respectfully presented this 2nd day of May, 2008 A.D.

(L.S.)

Gary-Lynn McDuff, a man,
c/o Juan Carlos Harris

In Original Jurisdiction



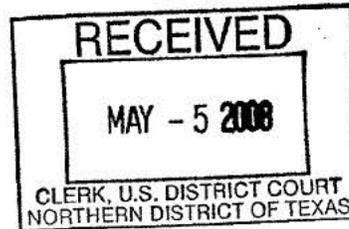
Gary-Lynn: McDuff
c/o Juan Carlos Harris



2 May 2008

3:08 cv 526-L

Karen Mitchell, Clerk
1100 Commerce Street
Room 1452
Dallas, Texas 75242
USA



Dear Ms Mitchell,

Please find enclosed a Notice timely rejecting the SUMMONS and COMPLAINT with all applicable rules, without dishonor for valid reasons.

An Original has today been sent to you, Judge Lindsay and Harold R. Loftin, Jr. Inside this envelope you will also find a 4th Original to be stamped and dated as received and returned to me in the pre-paid envelope attached to it.

Kindest regards,

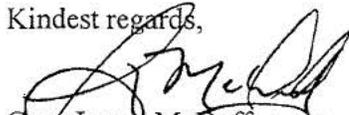
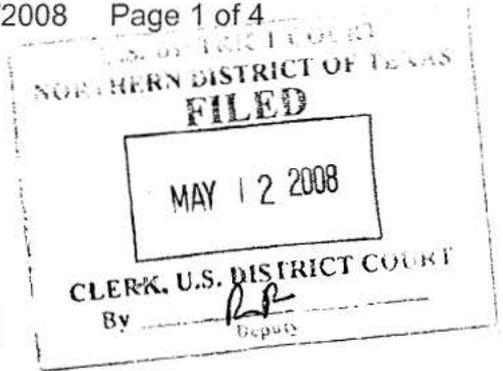

Gary-Lynn: McDuff, a man

EXHIBIT C

ORIGINAL



From: Gary-Lynn McDuff, a man,
c/o Juan Carlos Harris



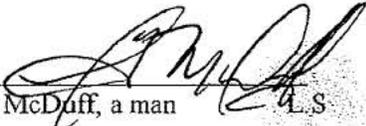
To: Karen Mitchell, Clerk
1100 Commerce St., Room 1452
Dallas, Texas 75242
and
Harold R Loftin, Jr
SEC Fort Worth Regional Office
801 Cherry St
Suite 1900
Fort Worth, TX 76102
and
Sam A. Lindsay, Judge
c/o 1100 Commerce St., Room 1452
Dallas, Texas 75242
Respondents

Reference: Case Number: 3-08CV-526-L
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

CORRECTED ATTACHMENT TO
"NOTICE OF SPECIAL APPEARANCE
NON ACCEPTANCE OF OFFER TO CONTRACT ENTITLED
"SUMMONS" IN Case No.3-08CV-526-L,
FILED ON March 26, 2008
NON CONSENT TO THESE PROCEEDINGS,
NON CONSENT TO ACT AS SURETY
080502"
080505

Attached is the corrected attachment as referenced above in the title. The original contained the statement "I DO CONSENT TO THESE PROCEEDINGS" which was made in error. The corrected copy contains the annotation that was intended "I DO NOT CONSENT TO THESE PROCEEDINGS."

Dated: May 5, 2008
As I say it, so it is done.



Gary-Lynn McDuff, a man L.S.

AO 440 (Rev. 10/93) Summons in a Civil Action

United States District Court

NORTHERN DISTRICT OF TEXAS

~~SECURITIES AND EXCHANGE COMMISSION~~
~~PLAINTIFF~~
CORRECTED ATTACHMENT TO NOTICE OF SPECIAL
APPEARANCE/NON ACCEPTANCE OF OFFER TO
ENTITLED "SUMMONS" IN CASE #3:08-CV-526L
FILED ON MARCH 26, 2008/NON CONSENT TO THESE
PROCEEDINGS/NON CONSENT TO ACT AS SURETY/080502

GARY L. McDUFF,
GARY L. LANCASTER, and
ROBERT T. REESE

CASE NUMBER:

3-08 CV-526-L

Defendants.

I DO NOT ACCEPT THIS OFFER

TO: (Name and address of defendant)

GARY L. McDUFF
Galena No. 29
Col. Acapantzingo
Curanavaca, Morelos 62200
MEXICO

I DO NOT CONSENT TO THESE PROCEEDINGS
I DO NOT CONSENT TO ACT AS SURETY

DATED: MAY 5, 2008

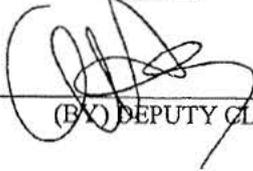
YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's Attorneys (NAME AND ADDRESS)

Harold R. Loftin, Jr.
SECURITIES AND EXCHANGE COMMISSION, Fort Worth District Office
801 Cherry Street, Suite 1900, Unit #18
Fort Worth, TX 762018-6819

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK OF COURT

CLERK



(BY) DEPUTY CLERK

MAR 23 2008

MAR 26 2008

DATE

PROOF OF SERVICE

I, the undersigned, hereby certify and affirm that I served the following original document:

CORRECTED ATTACHMENT TO "NOTICE OF SPECIAL APPEARANCE NON ACCEPTANCE OF OFFER TO CONTRACT ENTITLED "SUMMONS" IN Case No.3-08CV-526-L, FILED ON March 26, 2008, NON CONSENT TO THESE PROCEEDINGS, NON CONSENT TO ACT AS SURETY 080502 " 080505 signed by Gary-Lynn: McDuff on May 2, 2008 with the following attachment:

I. A copy of SUMMONS with the words "I DO NOT ACCEPT THIS OFFER, I DO NOT CONSENT TO THESE PROCEEDINGS, AND I DO NOT CONSENT TO ACT AS SURETY" inscribed on the face with original signature of Gary-Lynn: McDuff dated May 2, 2008

by causing said documents be sent by Federal Express, with delivery confirmation and addressed to the following person/entity:

Karen Mitchell, Clerk
1100 Commerce St., Room 1452
Dallas, Texas 75242

Fed Ex # 86579148 8675

Including self addressed prepaid envelope for Return of 1 conformed copy

and
Sam A. Lindsay, Judge
1100 Commerce St.,
Dallas, Texas 75242

Fed Ex # 86579148 8686

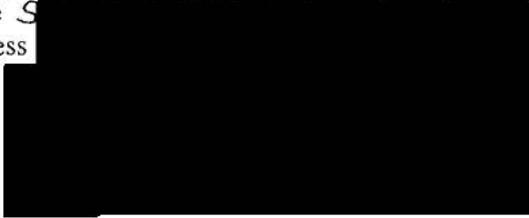
and
Harold R Loftin, Jr
SEC Fort Worth Regional Office
801 Cherry St
Suite 1900
Fort Worth, TX 76102

Fed Ex# 86579148 8697

Dated: May 5, 2008
Affirmed by:

Roselin Carlos

name S
address

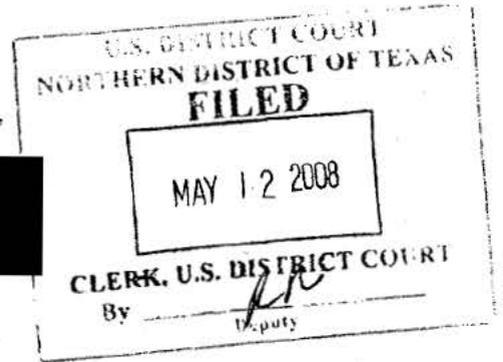
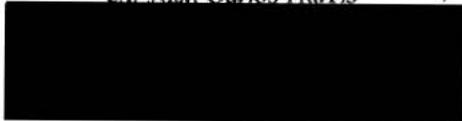


[Signature]

EXHIBIT D

ORIGINAL

From: Gary-Lynn McDuff, a man,
c/o Juan Carlos Harris



To: Karen Mitchell, Clerk
1100 Commerce St., Room 1452
Dallas, Texas 75242
and
Harold R Loftin, Jr
SEC Fort Worth Regional Office
801 Cherry St
Suite 1900
Fort Worth, TX 76102
and
Sam A. Lindsay, Judge
c/o 1100 Commerce St., Room 1452
Dallas, Texas 75242
Respondents

Reference: Complaint in Case Number: 3-08CV-526-L
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

NOTICE OF NON ACCEPTANCE OF OFFER
RETURN OF COMPLAINT DATED MARCH 26 2008
DEMAND FOR CREDENTIALS/ FIRM OFFER TO SETTLE
080505

I, Gary-Lynn McDuff, a man, hereinafter I, me, my or mine am competent to handle my own commercial affairs. I am, however, not trained in the law or the procedures of law, nor have I been able, as of this date, to retain competent assistance of counsel to advise me in this matter.

I am aware of the attached complaint signed by attorney Harold R Loftin, Jr, attorney for US Securities & Exchange Commission, 3-08CV-526-L UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS (DALLAS).

I have not yet been served with the COMPLAINT and do not waive any right, privilege, or defense.

A handwritten signature in black ink, appearing to be "GLM".

I declare the COMPLAINT, hereinafter "offer" to be an offer on the part of the Harold R Loftin, Jr, to settle a private dispute with me.

Notice is given that the COMPLAINT is returned with the following statement inscribed on it's face: I DO NOT ACCEPT THIS OFFER, I DO NOT CONSENT TO THESE PROCEEDINGS, I DO NOT CONSENT TO ACT AS SURETY with my signature.

I declare Case No. 3-08CV-526-L, and any claim and associated responses, to be in commerce.

I do not give Harold R Loftin, Jr , attorney for US Securities & Exchange Commission , or the UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS (DALLAS), license to make any legal determinations for me, nor is it my intention ever to do so without proof of obligation to do so.

I declare attorney Harold R Loftin, Jr , attorney for US Securities & Exchange Commission, Karen Mitchell, clerk, and Sam A Lindsey, judge, hereinafter "Respondents" to be legally incompetent as regards this matter.

I declare that the UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS (DALLAS) is foreign to my venue and jurisdiction.

At no time in this or any future negotiations do I agree to give to anyone license to make legal determinations for me, including but not limited to Karen Mitchell, hereinafter "Clerk", and Sam A. Lindsay, hereinafter "Judge", together, hereinafter "Court" or Harold R Loftin, Jr , attorney for US Securities & Exchange Commission , without a written Power of Attorney, signed by me, in red ink and sealed by me with a red thumb print stating with particularity the limits of that Power of Attorney. Lest there be any doubt, I hereby fire the Court and Harold R Loftin, Jr , attorney for US Securities & Exchange Commission.

Notice is given to UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS (DALLAS), and Harold R Loftin, Jr , attorney for US Securities & Exchange Commission that the COMPLAINT, is rejected timely and in accordance with all applicable rules, without dishonor, for valid reasons including, but not limited to (1) An inherent conflict of interest where the proposed judge, attorney, and clerk are purported employees of the principal in this dispute, and (2) The lack of evidence, in the record, that the Court is a court of strictly judicial character, (3) Lack of evidence, in the record, that the Court agrees only be bound by the Constitution for the united States and constitutionally compliant laws, rules, and regulations, and (4) Lack of evidence in the record of a plaintiff with the standing to sue or be sued.

Notice is given to the Court and Harold R. Loftin, Jr. that the offer to contract, entitled COMPLAINT IN CASE No. 3-08CV-526-L is hereby "justifiably refused" for cause.



I am not aware of any action that I might have done to injure the plaintiff, or of a duty to the plaintiff of which I am in breach.

If I have broken any laws of man or of God, I am truly sorry, as it was not my intent to do so.

This is my firm offer to make full restitution for any act I might have committed upon proof of injury and proof of my liability, upon presentment of an invoice.

This is my firm offer to settle all matters by entering into private negotiations with Harold R Loftin, Jr., hereinafter "You, your," for the express purpose of settling this apparent dispute.

I command Respondent Karen Mitchell, Clerk of Court, to keep a public record of these private negotiations by filing all documents submitted to her into the referenced case number for future reference.

Before we can proceed further there are a few preliminary items that need to be resolved.

Formal demand is made of you to provide me with the following evidence and completed documents within ten days or request an extension of time, if needed, which will be granted or show cause why not:

1. Provide evidence that there is a rule, law, statute, regulation, code, contract, or injury, that you or some other competent witness is willing to swear to under penalty of perjury to be true, correct, and complete, and not misleading, that applies to me and that would create a liability on my part in behalf of the plaintiff.
2. Provide me with evidence that the plaintiff has standing to sue or be sued.
3. Fill out the attached ADMINISTRATIVE NOTICE AND DEMAND FOR IDENTIFICATION AND CREDENTIALS QUO WARRANTO for Harold R. Loftin, Jr., signed under penalty of perjury, and thereafter timely returning the fully executed document to me.
4. Fill out the attached ATTORNEY QUESTIONNAIRE, in order to prove your status and standing to represent the Plaintiff.
5. If the Plaintiff is not the Real Party in Interest, please provide the documentary evidence identifying the Real Party in Interest and the evidence it is willing to use to establish my liability and its' injury.

Your failure to provide the requested evidence and documentation within ten days, or show cause why not, or request an extension of time it will be deemed:

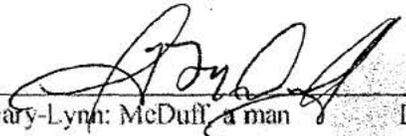
1. You agree with me that there is no rule, law, statute, regulation, code, contract, or injury, that you or some other competent witness is willing to swear to under penalty of perjury to be true, correct, and complete, and not misleading, that applies to me and that would create a liability on my part in behalf of the plaintiff.
2. You agree with me that the Plaintiff has no standing to sue or be sued.



3. You agree that your failure sets for the record, as ultimate fact(s) that the Harold R. Loftin, Jr. is acting without authority, office, and/or capacity as an officer, official, or agent for any original jurisdiction non-corporate governmental "United States of America" pursuant to the Constitution for the United States of America, Anno Domini 1789) with Articles of Amendment Anno Domini 1791.
4. You agree with me that there is no competent witness willing to provide evidence that he has been injured and that I have refused to make him whole.
5. You agree with me that there are no contracts in effect between me and the Plaintiff.
6. You agree with me that you have no specific authorization of law to exercise your Office outside of the District of Columbia e.g. in Texas.
7. You agree with me that you have no power of attorney to represent the Plaintiff.
8. You agree with me that I may make orders binding on you and all other principals, for whom you are acting as agent, to dismiss, close, or otherwise terminate the referenced case with prejudice, or otherwise as I deem just.
9. You agree with me that you are offering yourself as surety to compensate me for any injury your actions may cause me and agree to pay damages upon receipt of an invoice.
10. You agree with me that your failure to respond, and timely provide the required documents, after receipt of a valid, verified notice of non response, constitutes agreement with items 1-9 above, a judgment in estoppel and bar to a plea, and said judgment is enforceable by any judicial or non judicial remedy available to me in any jurisdiction.

Dated: May 5, 2008

As I say it, so it is done.



Gary-Lynn McDuff, a man L.S.

PROOF OF SERVICE

I, the undersigned, hereby certify and affirm that I served the following original document:

"NOTICE OF NON ACCEPTANCE OF OFFER/ RETURN OF COMPLAINT DATED MARCH 26 2008/DEMAND FOR CREDENTIALS/ FIRM OFFER TO SETTLE 080505" Gary-Lynn McDuff on May 5, 2008 with the following attachments:

1. A copy of the Complaint with the words "I DO NOT ACCEPT THIS OFFER, I DO NOT CONSENT TO THESE PROCEEDINGS, AND I DO NOT CONSENT TO ACT AS SURETY" inscribed on the face with original signature of Gary-Lynn McDuff dated May 5, 2008
2. ADMINISTRATIVE NOTICE AND DEMAND FOR IDENTIFICATION AND CREDENTIALS QUO WARRANTO FOR Harold R Loftin, Jr .
3. ATTORNEY QUESTIONNAIRE for Harold R. Loftin, Jr.

by causing said documents be sent by Federal Express, with delivery confirmation and addressed to the following person/entity:

Karen Mitchell, Clerk
1100 Commerce St., Room 1452
Dallas, Texas 75242
Including self addressed prepaid envelope for Return of 1 conformed copy

Fed Ex # 8657 9148 8675

and
Sam A. Lindsay, Judge
1100 Commerce St.,
Dallas, Texas 75242

Fed Ex # 8657 9148 8686

and
Harold R Loftin, Jr .
SEC Fort Worth Regional Office
801 Cherry St
Suite 1900
Fort Worth, TX 76102

Fed Ex# 8657 9148 8697

Dated: May 5, 2008
Affirmed by:

Roseline Corder

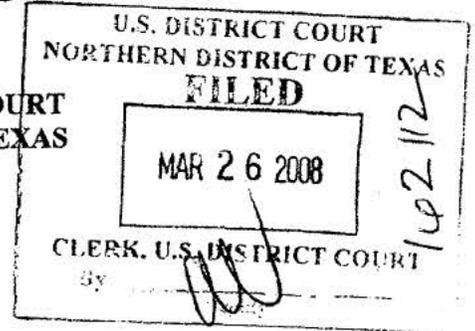
name
address



SEC v

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Civil Action No.

GARY L. McDUFF,
GARY L. LANCASTER, and
ROBERT T. REESE,

8-08 CV-526-L

Defendants.

COMPLAINT

The United States Securities and Exchange Commission ("Commission") files this Complaint against Gary L. McDuff, Gary L. Lancaster and Robert T. Reese and would respectfully show the Court as follows:

SUMMARY

I DO NOT ACCEPT THIS OFFER
I DO NOT CONSENT TO THESE PROCEEDINGS
I DO NOT CONSENT TO ACT AS SURETY

1. The Commission files suit against Gary L. McDuff ("McDuff"), Gary L. Lancaster ("Lancaster"), and Robert T. Reese ("Reese") for their respective roles in a fraudulent, unregistered offering through which they raised over \$11 million from approximately 105 investors nationwide. McDuff, the mastermind behind the fraud and a convicted felon, recruited Gary-Lynn McDuff, a man
Lancaster, a former registered representative, to be the "face" of the offering, which was conducted through the Lancorp Financial Fund Business Trust ("Lancorp Fund"). McDuff also recruited Reese, his long-standing partner, to be the primary salesman for the investment. The Lancorp Fund's offering document, a materially false and misleading Private Placement Memorandum ("PPM"), stated that the Lancorp Fund would invest only in highly rated debt

securities; Lancaster, as Trustee, would be paid a maximum of 50 basis points a quarter; and no commissions would be paid on initial investments. Unfortunately for investors, the defendants adhered to none of these restrictions.

2. As a result of facts learned in connection with its action styled *Securities and Exchange Commission v. Megafund Corp., et al.*, Civil Action No. 3-05-CV-1328-L (N.D. Texas) (hereinafter "*Megafund*"), involving a fraudulent "high yield" Ponzi scheme, the Commission learned that \$9.3 million of over \$14 million invested with Megafund came from the Lancorp Fund. Examining the operation of the Lancorp Fund leads to the inescapable conclusion that the defendants engaged in fraud and deception. Lancorp Fund assets were supposed to be invested only in highly-rated debt securities, yet Lancaster and McDuff agreed to have the Lancorp Fund invest millions in the Megafund Ponzi scheme. The Lancorp Fund was not allowed to pay commissions on investments in the fund, yet Lancaster paid out over \$300,000 in covert commissions to McDuff and Reese. Finally, the Lancorp Fund was to distribute investment profits to investors and only allowed to pay Lancaster 50 basis points minus expenses per quarter, yet Lancaster paid himself over \$336,000 by establishing an undisclosed side agreement to share in the Megafund Ponzi payments without ever distributing "profits" to investors.

3. In the interest of protecting the investing public from further such unscrupulous conduct, the Commission files suit against the Defendants seeking injunctive relief, disgorgement of ill-gotten gains, prejudgment interest, and civil penalties.

JURISDICTION

4. The Court has jurisdiction over this action pursuant to Section 20(d) and 22(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77t(d) and § 77v(a)], Sections

21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e) and 78(aa)] and Section 214 of the Investment Advisers Act of 1940 (the "Investment Advisers Act") [15 U.S.C. § 80b-14]. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Northern District of Texas.

DEFENDANTS

5. Gary L. McDuff ("McDuff"), age 52, is a former resident of Deer Park, Texas. McDuff has never been associated with a registered broker dealer or investment adviser. In 1994, McDuff was convicted of two counts of money laundering and was sentenced to 36 months in federal prison. McDuff refused to appear for testimony in response to an investigative subpoena issued by the Commission and was the subject of a subpoena enforcement action, *SEC v. Gary Lynn McDuff*, Misc. Action No. 406-MC-Y (N.D. Tex. filed March 10, 2006). On information and belief McDuff currently resides in Mexico.

6. Gary L. Lancaster ("Lancaster"), age 54, is a resident of Vancouver, Washington and the control person of the Lancorp Financial Fund Business Trust and Lancorp Financial, LLC. Lancaster was a registered representative, most recently with American Fidelity Securities, Inc. from March 2006 through July 2006. Previously, Lancaster was registered with Sloan Securities Corporation from July 2005 through October 2005 and with The O.N. Equity Sales Company from March 2004 through January 2005. Lancaster has held Series 6, 7, 63, and 65 licenses. On September 5, 2006, the NASD barred Lancaster from association with any NASD member in any capacity.

7. Robert T. Reese ("Reese"), age 65, is a resident of Carmel, California and a licensed insurance agent. In 2004, the California Department of Corporations entered a Desist

and Refrain Order against Reese for acting as an unregistered broker selling unregistered securities. Reese has never been associated with a registered broker, dealer or investment adviser.

RELATED ENTITIES

8. Lancorp Financial Fund Business Trust (previously referred to as the "Lancorp Fund") was a private placement fund that Lancaster organized as a Nevada domestic business trust. Lancaster began soliciting investor funds for the trust in 2003. Lancaster was the lone signatory on all Lancorp Fund bank accounts. The State of Nevada revoked the Lancorp Fund's registration in 2006. Lancorp Financial Group, LLC (previously referred to as "Lancorp LLC"), incorporated in Oregon in 1996, was established to be the financial adviser for a private placement fund, and ultimately, served in this capacity for the Lancorp Fund. Lancaster was the sole principal and control person of Lancorp LLC. The Oregon Secretary of State revoked Lancorp LLC's registration in 2006. Pursuant to an agreement between the *Megafund* court-appointed receiver and Lancaster, the Lancorp Fund and Lancorp LLC became part of the *Megafund* receivership in January of 2006.

BACKGROUND FACTS

9. In the fall of 2000, Lancaster was working as a bank officer. In the course of his duties, Lancaster was introduced to McDuff, who was looking for a loan. Ultimately, the bank elected not to do business with McDuff because of his 1994 conviction for money laundering. McDuff, however, convinced Lancaster that he was innocent of any wrong-doing. Lancaster later went into business with McDuff, helping to manage investments with McDuff. In March 2003, at the direction of McDuff, Lancaster created the Lancorp Fund.

10. The Lancorp Fund's private placement offering began on March 17, 2003. The Private Placement Memorandum, previously referred to as the "PPM" for the Lancorp Fund was prepared by an attorney in Houston who had a prior existing relationship with McDuff. Once he provided Lancaster with the PPM, McDuff supplied Lancaster with a "broker" to sell the investment – Robert T. Reese, an insurance agent in Carmel, California.

11. According to the PPM, the Lancorp Fund was an "unregistered closed-end non-diversified management investment company" that would "not be managed like a typical closed-end investment company." Instead, the Lancorp Fund would be internally managed by the trustees (i.e., Lancaster) and not by a separate investment adviser. The PPM stated that the Lancorp Fund's investment strategy involved the "issuance of Forward Commitments" to participate in transactions relating to debt securities with the goal of "maximizing the protection of investors' funds." Specifically, the PPM stated that the Lancorp Fund was only allowed to invest in original issue debt securities rated at least "A+" by Standard & Poor's Corporation or "A1" by Moody's Investor Service. Additionally, the PPM falsely stated that that Lancaster was "an investment adviser registered with the Commission under the Investment Advisers Act of 1940, as amended."

12. The PPM set forth that no commissions would be paid on the sale of investor shares, and that Lancaster, as trustee of the Lancorp Fund, would be compensated in an amount equal to .5% of the fund's deposits (i.e., assets under management) minus expenses. The PPM also set forth that any remaining quarterly income would be distributed as "investor returns" to the fund's shareholders. Application materials asked potential investors whether they were accredited, and if so to "check the box." Investors were not provided with any financial information, audited or otherwise.

13. The Lancorp Fund was offered to investors nationwide through a general solicitation. The Lancorp Fund raised approximately \$11 million from 105 investors (including at least 37 unaccredited investors). The majority of the investors in the Lancorp Fund were referred to the Lancorp Fund by Reese, with the remainder coming from McDuff. Reese advertised the Lancorp Fund investment in at least one investor periodical, and even created his own "lead sheets" that he sent to potential investors. The lead sheets borrowed some information from the Lancorp Fund PPM, but also contained statements that Reese simply fabricated. According to the lead sheets, investor funds would be deposited in an A+ or higher rated US Bank; security for the deposits, which guaranteed protection of 100% of an investor's principal, would be provided by US insurers rated A or higher by AM Best Company; investments in the Lancorp Fund were safe and would have no sales charges; and the trustee fee would be deferred until a minimum return was paid to investors.

14. In January 2005, McDuff introduced Lancaster to Leitner and the Megafund investment opportunity. McDuff showed Lancaster the Megafund offering documents, which set forth that investor funds would be placed in "an account at a major U.S. Brokerage firm" where an unnamed "Trader" would engage in "arbitrage" transactions involving the purchase and sale of "Treasury bills, certificates of deposit, stocks, bonds, securities and derivatives of such on margin or otherwise . . . and Tri-Party Repurchase Agreement transactions." The Megafund materials went on to promise that investors would receive a "ten percent profit" per month and that their principal investment would never be at risk. After hearing a pitch on Megafund, and at McDuff's recommendation, on February 8, 2005 Lancaster directed the Lancorp Fund to invest \$5 million in the Megafund offering regardless that such an investment was clearly outside the investment parameters allowed by the Lancorp Fund PPM.

15. Lancaster initially told McDuff and Reese that the Lancorp Fund could not compensate them for referring investors to the fund for two reasons: the Lancorp Fund PPM explicitly stated that no commissions would be paid, and Lancaster knew that McDuff and Reese were not registered representatives and therefore could not receive transaction-based compensation. Shortly after the Lancorp Fund's initial investment in Megafund, however, McDuff devised a plan to circumvent the Lancorp Fund's proscription on the payment of commissions.

16. McDuff caused an entity he controlled named MexBank S.A. de C.V. ("MexBank") to enter into a "joint-venture" profit-sharing arrangement with Lancorp Financial Group LLC (previously described as "Lancorp LLC"), which Lancaster controlled. Lancorp LLC also entered into an agreement with the Lancorp Fund, which provided that Lancorp LLC would act as an investment adviser to the Lancorp Fund. Lancaster executed the agreement for both parties. The joint-venture agreement set forth that all monthly gross profits payable by Megafund to the Lancorp Fund would be divided 64.8% to Lancorp LLC and 35.2% to MexBank. The agreement was dated March 17, 2005, but stated that the effective date was February 2, 2005, in order to "memorialize a prior understanding of the division of earnings derived from investments in the Megafund Corporation." None of this was ever disclosed to Lancorp Fund investors. As a result, when Megafund started making "profit" payments, which were in reality Ponzi payments, to the Lancorp Fund, McDuff and Reese were able to receive compensation through MexBank for bringing investors to the Lancorp Fund.

17. Between June 2004 and May 2005, Megafund raised over \$14 million from investors, including over \$9.3 million from the Lancorp Fund. Megafund never deposited investor funds with a U.S. brokerage firm as represented to investors. Instead, it transferred

approximately \$11 million of investor funds to an offshore bank account controlled by James Rumpf. Approximately \$9.5 million of those funds were transferred to a U.S. bank account controlled by a convicted felon named Bradley Stark ("Stark"). Stark's bank records revealed that he was operating a separate Ponzi scheme, and that at the time the Commission filed the *Megafund* emergency action, he had transferred approximately \$2.6 million in Ponzi payments from his scheme back to Megafund.

18. On March 23, 2005, Megafund made a \$500,000 "profit" payment to the Lancorp Fund. Lancaster re-invested some of those funds with Megafund, transferred \$138,229 through Lancorp LLC to a personal account, and transferred \$128,437 to MexBank. On April 26, 2005, Megafund made a second \$500,000 "profit" payment to the Lancorp Fund. This time, Megafund sent \$175,835 to MexBank directly, and \$324,165 to the Lancorp Fund. Lancaster transferred \$198,000 from the Lancorp Fund to his personal account, and re-invested the remaining \$126,165 with Megafund.

19. By the time the Commission filed its emergency action against Megafund on July 5, 2005, Lancaster had kept \$336,229 for himself and Reese and McDuff had divided \$304,272 through the undisclosed compensation arrangement. McDuff transferred \$45,792 to Reese from the MexBank account and kept the remaining \$258,480 for himself. No money or profits were distributed to Lancorp Fund investors.

CLAIMS

FIRST CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

20. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint by reference as if set forth *verbatim*.

21. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

22. As a part of and in furtherance of their scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in Paragraphs 1 through 19 above.

23. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

24. By reason of the foregoing, Lancaster, McDuff and Reese have violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM
Violations of Section 17(a) of the Securities Act

25. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint by reference as if set forth *verbatim*.

26. Defendants, directly or indirectly, singly, in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

27. As part of and in furtherance of this scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material fact and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those statements and omissions set forth in paragraph 1 through 19 above.

28. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness with regard for the truth. Defendants were also negligent in their actions regarding the representations and omissions alleged herein.

29. By reason of the foregoing, Lancaster, McDuff and Reese have violated, and unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM
Violations of Section 5(a) and 5(c) of the Securities Act

30. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint by reference as if set forth *verbatim*.

31. Defendants, directly or indirectly, singly and in concert with others, have been offering to sell, selling and delivering after sale, certain securities, and have been, directly and

SEC v. Gary L. Lancaster, et al.

COMPLAINT

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indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

32. As described in paragraphs 1 through 19, the investments were offered and sold to the public through a general solicitation of investors. No registration statements were ever filed with the Commission or otherwise in effect with respect to these securities.

33. By reason of the foregoing, Lancaster, McDuff and Reese have violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

FOURTH CLAIM
Violations of Section 15(a)(1) of The Exchange Act

34. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint as if set forth *verbatim*.

35. At the times alleged in this Complaint, Defendants have been in the business of effecting transactions in securities for the accounts of others.

36. Defendants made use of the mails and of the means and instrumentalities of interstate commerce to effect transactions in and to induce or attempt to induce the purchase of securities.

37. At the times alleged in this Complaint Defendants were not registered with the Commission as a broker or dealer, as required by Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

38. By reason of the foregoing, Lancaster, McDuff and Reese have violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. §78o(a)(1)].

FIFTH CLAIM
(Against Lancaster)
Violations of Sections 206(1) and 206(2) of the Investment Advisers Act

39. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint as if set forth *verbatim*.

40. Lancaster, directly and indirectly, by use of the mails and means and instrumentalities of interstate commerce, while acting as an investment adviser, intentionally, knowingly or recklessly:

(a) employed devices, schemes and artifices to defraud clients or prospective clients; and

(b) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients.

41. By reason of the foregoing, Lancaster violated and, unless enjoined, will continue to violate Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§80b-6(1) and (2)].

SIXTH CLAIM
(Against McDuff and Reese)
Aiding and Abetting
Violations of Sections 206(1) and 206(2) of the Investment Advisers Act

42. Plaintiff Commission repeats and incorporates paragraphs 1 through 19 of this Complaint as if set forth *verbatim*.

43. Lancaster, directly and indirectly, by use of the mails and means and instrumentalities of interstate commerce, while acting as an investment adviser, intentionally, knowingly or recklessly:

(a) employed devices, schemes and artifices to defraud clients or prospective advisory; and

(b) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients.

44. McDuff and Reese knowingly provided substantial assistance to Lancaster in his violations of Sections 206(1) and 206(2) of the Investment Advisors Act.

45. By reason of the foregoing, McDuff and Reese aided and abetted violations of, and unless enjoined, will continue to aid and abet violations of Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§80b-6(1) and (2)].

RELIEF REQUESTED

The Commission seeks the following relief:

46. An order of the Court permanently enjoining the defendants, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], and Sections 10(b) and 15(a)(1) of the Exchange Act, [15 U.S.C. § 78j(b) and § 78o(a)(1)], and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

47. An order of the Court permanently enjoining the Lancaster, his agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§80b-6(1) and (2)].

48. An order of the Court permanently enjoining the McDuff and Reese, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from aiding and abetting future violations of Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§80b-6(1) and (2)].

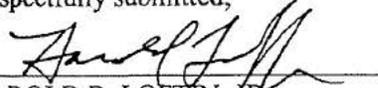
49. An order of the Court directing Defendants to disgorge an amount equal to the funds and benefits each obtained illegally as a result of the violations alleged, plus prejudgment interest on that amount.

50. An order of the Court directing defendants to pay civil monetary penalties in an amount determined as appropriate by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(e) of the Investment Advisers Act [15 U.S.C. § 80b-9(e)] for their violations of the federal securities laws as alleged herein.

51. All further relief as the Court may deem just and proper.

DATED: March 26, 2008

Respectfully submitted,



HAROLD R. LOFTIN, JR.
Texas Bar No. 12487090
U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
(817) 978-6450
(817) 978-4927 (fax)

JS 44 (Rev. 3/99)

ORIGINAL CIVIL COVER SHEET 3-08 CV-526-L

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court.

I.(a) PLAINTIFF SECURITIES AND EXCHANGE COMMISSION

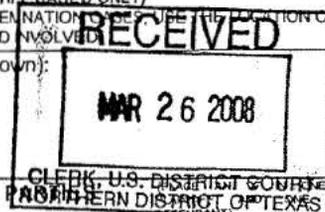
DEFENDANTS GARY L. McDUFF, GARY L. LANCASTER and ROBERT T. REESE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant: Country of Mexico (IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEY (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) HAROLD R. LOFTIN, JR. U.S. Securities & Exchange Commission, Burnett Plaza, Ste. 1900, 801 Cherry Street, Unit #18, Fort Worth, TX 76102-6882 (817) 978-6450

ATTORNEYS (If known):



II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

III. CITIZENSHIP OF PRINCIPAL PARTY (For Diversity Cases Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, [15 U.S.C. § 77e(a), 77e(c) and 77q(a)] ("Securities Act") and Sections 10(b) and 15(e) of the Securities Exchange Act of 1934, [15 U.S.C. § 78j(b) and 78o(a)] ("Exchange Act"), and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND YES NO

VIII. RELATED CASE(S) (See Instructions): IF ANY

JUDGE Sam A. Lindsay DOCKET NUMBER 3-05CV1328-L

DATE 3/26/08 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY Receipt # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**ADMINISTRATIVE NOTICE AND DEMAND FOR
IDENTIFICATION AND CREDENTIALS
QUO WARRANTO
for Harold R. Loftin Jr.
Attorney**

This "Good Faith Presentment" is presented to **Harold R. Loftin Jr.** for purposes of obtaining full disclosure of identification under and determining under what authority, office, and capacity the Recipient appears to approach the presenter.

This Administrative Notice, duly served on you, and deemed actual, constructive and sufficient notice, requires that you provide to the presenter, within ten days from the time of presentment, copies of the below listed documents, said copies to be certified and exemplified in accordance with 1 Stat 122 and 2 Stat 298 and FRCP Rule 902, under Article [the] VI of the Constitution for the United States of America, Anno Domini 1789, with Articles of Amendment Anno Domini 1791.

1. Oath of Office (Title 5 U.S.C. §3331)
2. Officer Affidavit (Title 5 U.S.C. §3332) and/or
3. Employee Affidavit (Title 5 U.S.C. §3333)
4. Surety Bond (Title 5 U.S.C. §2901 & D.C. Code 11-7040)
5. Registration (Title 22 U.S.C. §611 and §612)
6. Authorization of law to exercise your office outside of the District of Columbia (U.S.C. Title 4 Sec 72)

Your failure, refusal, and or neglect to fully and timely comply will set, for the record, as ultimate fact(s) that you are acting without authority, office, and/or capacity as an officer, official, or agent for any original jurisdiction non-corporate governmental "United States of America" pursuant to the Constitution for the United States of America, Anno Domini 1789) with Articles of Amendment Anno Domini 1791, to approach presenter.

It is presumed and/or assumed that it is your duty and fiduciary obligation to provide the above information, in a timely and truthful manner.

I do not give you license to make any legal determinations for me.

Silence equates with fraud/dolus.

This administrative Notice and Demand is not intended to hinder, delay, obstruct, intimidate, or in any way threaten anyone, but is simply a means of invoking recipient's duty to act pursuant to the above quoted statutes, which apply to the recipient in recipient's official capacity, for lawful disclosure of vitally needed information.

Should recipient not timely and fully comply, it will be deemed, by tacit procuracy, your implied consent to a challenge, pursuant to a petition for a Writ of Quo Warranto (63 AmJur 2nd 5.441), to your authority, in a court of correct jurisdiction.

Any further contact, instructions, directions, documents transferred from you, to me by means of postal delivery or electronic or other means, leaves you open for prosecution, by the proper authorities, for mail fraud and/or wire fraud, until such time as you have properly and fully identified yourself, pursuant to the above quoted statutes.

If you have any objections or competent reasons as to why you cannot comply with this Administrative Notice you must put them in writing, stating all supporting evidence, signed by you within the time herein stated.

Respectfully presented this 5th day of May, 2008 A.D.

(L.S.)

Gary-Lynn: McDuff, a man,

In Original Jurisdiction



Attorney Questionnaire
for HAROLD R LOFTIN, JR.

1a. Do you have a business license?.....[Yes [No

1b. If so, please provide the following information:

Licensing authority: _____

License Number: _____

Date of License: _____

Name of Business: _____

To whom issued: _____

2a. Are you licensed to practice law?.....[Yes [No

2b. If so, please provide the following information:

Licensing authority: _____

License Number: _____

Date of License: _____

2c. What does this license authorize (e.g. The practice of law or the operation of a business?)

3a. Are you a personal corporation or other entity when acting as an attorney?.....[Yes [No

3b. If Yes, in what capacity do you act?

3c. If you act as a corporation while in the capacity of attorney, please provide the following information:

Attorney Questionnaire – ATTACHMENT 3 for
“NOTICE OF NON ACCEPTANCE OF OFFER
RETURN OF COMPLAINT DATED March 26, 2008
FIRM OFFER TO SETTLE
080505”

Location where formed: _____

Date of Formation: _____

Name of corporation: _____

Name of Corporation CEO or President: _____

Corporate liability: Limited Regular (check one)

3d. If an alien or foreign corporation, has the corporation been registered with any State Secretary of State? Yes No

3e. If Yes, please provide the following information:

Registering authority: _____

Registration number: _____

Date of registration: _____

4. Please provide your Attorney Bar Association Member Card#:

5a. Are you bonded for the practice of law? Yes No

5b. If Yes, please provide the following:

Bond number: _____

Bond company name: _____

Bond company address: _____

Bond company phone: (____) _____ - _____

Bond amount: \$ _____

Bond description: _____

Attorney Questionnaire – ATTACHMENT 3 for
“NOTICE OF NON ACCEPTANCE OF OFFER
RETURN OF COMPLAINT DATED March 26, 2008
FIRM OFFER TO SETTLE
080505”

6a. Do you carry Errors and Omissions Insurance?.....[] Yes [] No

6b. If Yes, please provide the following:

Insurance number: _____

Insurance company name: _____

Insurance company address: _____

Insurance company phone: (_____) _____ - _____

Insurance amount: \$ _____

Insurance description: _____

6c. If self insured, have you listed the assets used to form the insurance with any State Insurance Commission?.....[] Yes [] No

7a. Are you insured against malpractice?.....[] Yes [] No

7b. If Yes, please provide the following:

Insurance number: _____

Insurance company name: _____

Insurance company address: _____

Insurance company phone: (_____) _____ - _____

Insurance amount: \$ _____

Insurance description: _____

7c. If self insured, have you listed the assets used to form the insurance with any State Insurance Commission?.....[] Yes [] No

Attorney Questionnaire – ATTACHMENT 3 for
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FIRM OFFER TO SETTLE
080505”

7d. If Yes, what State? _____

8. Are you licensed to practice in endeavors-undertakings other than JUDICIAL, at and before the Executive branch (quasi-judicial) levels for Administrative Pleading as required by the class of cases represented on page 286, 1 US Sct. Digest under "Exhaustion of Administrative Remedies?"
 Yes No

8a. If Yes, please provide:

Licensing Authority in the Executive Branch: _____

8b. Your license Number: _____

8c. The date of license: _____

9. Do you have Power of Attorney to represent the juristic person/corporate entity known as GARY L. MCDUFF?..... Yes No

If Yes, please provide the following:

9a. Date of Power of Attorney: _____

9b. Is the Power of Attorney General or Limited (check one)

9c. What date does it expire? _____

9d. If limited, what are the limitations?

9e. If more space if required, use the back of this page to continue:

9f. Authorizing Signature (officer) _____

9g. Is signature notarized?..... Yes No

10. Do you have Power of Attorney to represent the man known as Gary-Lynn: McDuff?
 Yes No

If Yes, please provide the following:

Attorney Questionnaire – ATTACHMENT 3 for
“NOTICE OF NON ACCEPTANCE OF OFFER
RETURN OF COMPLAINT DATED March 26, 2008
FIRM OFFER TO SETTLE
080505”

10a. Date of Power of Attorney: _____

10b. Is the Power of Attorney General or Limited (check one)

10c. What date does the Power of Attorney expire? _____

10d. If limited, what are the limitations?

10e. If more space if required, use the back of this page to continue:

10f. Authorizing Signature _____

10g. Is signature notarized?.....[Yes No

11. Do you have Power of Attorney to represent the juristic person/corporate entity known as
SECURITIES EXCHANGE COMMISSION?.....[Yes No

If Yes, please provide the following:

11.a Date of Power of Attorney: _____

11.b. Is the Power of Attorney General or Limited (check one)

11.c. What date does it expire? _____

11.d. If limited, what are the limitations?

11.e. If more space if required, use the back of this page to continue:

11.f Authorizing Signature (officer) _____

Attorney Questionnaire – ATTACHMENT 3 for
“NOTICE OF NON ACCEPTANCE OF OFFER
RETURN OF COMPLAINT DATED March 26, 2008
FIRM OFFER TO SETTLE
080505”

11.g Is signature notarized?.....[Yes No

12. Do you have Power of Attorney to represent the juristic person/corporate entity known as UNITED STATES OF AMERICA ?.....[Yes No

If Yes, please provide the following:

12.a Date of Power of Attorney: _____

12.b. Is the Power of Attorney [General or [Limited (check one)

12.c. What date does it expire? _____

12d. If limited, what are the limitations?

12e. If more space if required, use the back of this page to continue:

12.f Authorizing Signature (officer)_____

12.g Is signature notarized?.....[Yes No

13. Do you have any first hand knowledge of the facts in this matter?.....[Yes No

14. Are you competent to be a witness?.....[Yes No

15. Are you a competent witness in this case?.....[Yes No

16. Is your client legally incompetent in that he has declared himself to be either unwilling or unable to negotiate directly with me?.....[Yes No

17. Has your client agreed that he will be bound by your actions and legal determinations?
[Yes No

Verification:

I declare under the penalties of perjury and under my full commercial liability that the information included herein is true, correct, complete, and not misleading.

Attorney Questionnaire – ATTACHMENT 3 for
“NOTICE OF NON ACCEPTANCE OF OFFER
RETURN OF COMPLAINT DATED March 26, 2008
FIRM OFFER TO SETTLE
080505”

DATED THIS _____ day of _____, 2008.

(Signature)

Harold R. Loftin Jr. _____ Attorney

(Address) _____

(City) _____ (State) _____ (Zip Code)

() _____ - _____ (Phone)

Attorney Questionnaire – ATTACHMENT 3 for
“NOTICE OF NON ACCEPTANCE OF OFFER
RETURN OF COMPLAINT DATED March 26, 2008
FIRM OFFER TO SETTLE
080505”

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

**GARY L. McDUFF,
GARY L. LANCASTER, and
ROBERT T. REESE,**

Defendants.

**Civil Action No. 3:08-cv-526-L
ECF**

PLAINTIFF'S MOTION TO REOPEN CASE

Plaintiff Securities and Exchange Commission ("Commission") moves to reopen this case, which was administratively closed on September 30, 2010, in order to complete service of process on Defendant Gary L. McDuff ("McDuff") and to pursue all claims alleged against him.

1. McDuff is the only remaining Defendant against whom the Commission has claims pending in this case. On March 27, 2008, the Court entered Agreed Final Judgments against Defendants Reece and Lancaster. *See* Docs. 7 and 8.

2. The Commission made repeated attempts to complete service of process upon McDuff, to whom summons was first issued on March 26, 2008. *See* Doc. 5.

3. On May 6, 2008, McDuff filed the first in a series of nonsensical documents docketed in the Court's file as "Special Appearance, Non Acceptance of Offer to Contract Entitled 'Summons.'" *See* Doc. 9. In this filing, McDuff admitted he had received notice of the instant lawsuit but stated his refusal to accept service of the summons, claiming that he would "not consent" to these proceedings. *Id.* at p. 2. McDuff signed, dated, and fingerprinted the

summons. *Id.* at p. 6. McDuff filed an amended version of the same document on May 12, 2008. *See* Doc. 10.

4. After his initial response to the lawsuit, Mr. McDuff fled the United States, to Mexico. Based on information learned by the Commission concerning McDuff's believed whereabouts in Morelos, Mexico, the Court reissued summons to McDuff on March 10, 2010. *See* Doc. 14.

5. On September 30, 2010, the Court entered an Order administratively closing this case given its age and the unsuccessful attempts to track and serve McDuff. *See* Doc. 15. In its Order, the Court stated that

[S]hould further proceedings in [this action] become necessary or desirable, any party or the court may initiate such further proceedings in the same manner as if this order had not been entered. Further, if McDuff is served or if the SEC requests service by alternate means, the Court will reopen this action." *Id.* at pp. 1-2.

6. Following the Court's order, on October 14, 2010, the Mexican Secretariat of Foreign Relations filed documents with the Court captioned as Letters Rogatory. *See* doc. 16. McDuff remained unserved.

7. No further activity occurred in this case throughout the remainder of 2010 and 2011, while McDuff remained in Mexico. But between January 4, 2012 and April 20, 2012, McDuff appeared through a purported notary agent to file with this Court a new series of nonsensical documents including, but not limited to a "Tender for Setoff" and a "Default in Dishonor," which documents appear to contest the Court's jurisdiction, among other things.

8. McDuff was indicted in the Eastern District of Texas on June 11, 2009 for conspiracy to commit wire fraud, based on the same conduct alleged in the Commission's underlying Complaint in this action; *i.e.* his commission of a securities fraud through the

Lancorp Fund, an entity he helped operate and direct. See *United States of America v. Robert Thomas Reece and Gary Lynn McDuff*, Case No. 4:09-CR-0090 at Doc. 1, Indictment.

9. As he has done in this action, McDuff returned a copy of the indictment to the Court with the notation that it was “unaccepted” and the he did “not consent” to the proceedings. McDuff signed, dated, and fingerprinted his filing, and indicated that he was at that time residing in Mexico. *Id.* at Doc. 8. A superseding indictment was issued for McDuff on August 13, 2009. See Doc. 16.

10. On or about May 25, 2012, McDuff was arrested and returned to the United States. *Id.* at Doc. 60. He appeared in person before the Eastern District of Texas on June 15, 2012 for arraignment, at which time he was ordered to be detained in advance of his criminal trial. *Id.* at Doc. 63. McDuff is currently incarcerated in the Fannin County Jail in Bonham, Texas.

11. Given this development and the opportunity to now locate and effectively serve McDuff, the Commission seeks to reopen the case in order to serve him with process and litigate all of its claims against him.

12. Contemporaneously with the filing of this motion, the Commission is also filing a Motion to Reissue Summons for McDuff.

13. Therefore, based on the foregoing, Plaintiff Securities and Exchange Commission respectfully requests that the Court reopen this case in accordance with the terms of its September 30, 2010 order administratively closing it, and further requests all other relief to which it may be entitled.

Respectfully submitted,

s/ Jessica B. Magee

Jessica B. Magee

Texas Bar No. 24037757

U.S. Securities and Exchange Commission

Burnett Plaza, Suite 1900

801 Cherry Street, Unit 18

Fort Worth, Texas 76102

Phone: (817) 978-6465

Fax: (817) 978-4927

mageej@sec.gov

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT F

company that invested solely in highly rated debt securities. *Id.* Through Lancorp Fund and its affiliated entities, McDuff materially misrepresented the nature of the offering, the risks of the purported investment, and the ways investor funds would be used. *Id.* Together McDuff and the other Defendants raised more than \$11 million, at least \$9 million of which was invested, contrary to stated investment parameters, in a Ponzi scheme operation made the basis of a separate enforcement action by the Commission in *Securities and Exchange Commission v. Megafund Corp., et al.*, Civil Action No. 3-05-CV-1328-L (N.D. Texas) (hereinafter “Megafund”). *Id.* Lancorp Fund received more than \$1 million in purported “profits” from its Megafund investment. *Id.* While some of these funds were reinvested in Megafund, hundreds of thousands of dollars were distributed to, and retained by, Defendants and their affiliates. *Id.*

The Court entered Final Judgments against Reece and Lancaster on March 27, 2008 that, among other things, permanently enjoined them from violating the securities laws. *See* Final Judgment as to Defendant Gary L. Lancaster and Final Judgment as to Defendant Robert T. Reece, Docs. 7 and 8.

B. The Commission Made Repeated Efforts To Effect Service Of Process On McDuff, Who Avoided Service And Fled The Country.

The Commission has made repeated attempts to complete service of process upon McDuff, to whom summons was first issued on March 26, 2008. *See* Doc. 5.

On May 6, 2008, McDuff filed the first in a series of nonsensical documents docketed in the Court’s file as “Special Appearance, Non Acceptance of Offer to Contract Entitled ‘Summons.’” *See* Doc. 9. In this filing, McDuff admitted receiving notice of the instant lawsuit but stated his refusal to accept service of the summons and Complaint, claiming that he would “not consent” to these proceedings. *Id.* at p. 2. McDuff signed, dated, and fingerprinted the

summons. *Id.* at p. 6. McDuff filed an amended version of the same document on May 12, 2008. *See* Doc. 10.

After this initial response to the lawsuit, Mr. McDuff fled the United States, to Mexico. Based on information learned by the Commission concerning McDuff's believed whereabouts in Morelos, Mexico, the Court reissued summons to McDuff on March 10, 2010. *See* Doc. 14.

On September 30, 2010, the Court entered an Order administratively closing this case given its age and the unsuccessful attempts to track and serve McDuff. *See* Doc. 15. In its Order, the Court stated that

[S]hould further proceedings in [this action] become necessary or desirable, any party or the court may initiate such further proceedings in the same manner as if this order had not been entered. Further, if McDuff is served or if the SEC requests service by alternate means, the Court will reopen this action." *Id.* at pp. 1-2.

Following the Court's order, on October 14, 2010, the Mexican Secretariat of Foreign Relations filed documents with the Court captioned as Letters Rogatory. *See* doc. 16. McDuff remained unserved.

No further activity occurred in this case throughout the remainder of 2010 and 2011, while McDuff remained in Mexico. Then, between January 4, 2012 and April 20, 2012, McDuff appeared in this case, through a purported notary agent, and filed a new series of nonsensical documents including, but not limited to a "Tender for Setoff" and a "Default in Dishonor," which documents appear to contest the Court's jurisdiction, among other things.

C. In May 2012, McDuff Was Apprehended And Returned To The United States.

McDuff was indicted in the Eastern District of Texas on June 11, 2009 on charges of conspiring to commit wire fraud and money laundering, based on the same conduct alleged in the Commission's Complaint; *i.e.* his commission of a securities fraud through the Lancorp Fund, an

entity he helped operate and direct. See *United States of America v. Robert Thomas Reece and Gary Lynn McDuff*, Case No. 4:09-CR-0090 at Doc. 1, Indictment.

As he has done in this action, McDuff returned a copy of the indictment to the Court on June 22, 2009 with the notation that it was “unaccepted” and the he did “not consent” to the proceedings. *Id.* at Doc. 8. McDuff signed, dated, and fingerprinted his filing, and indicated that he was at that time residing in Mexico. *Id.*

On or about May 25, 2012, McDuff was arrested and returned to the United States. *Id.* at Doc. 60. He appeared in person before the Eastern District of Texas on June 15, 2012 for an arraignment and pretrial detention hearing, at which time he was ordered to be detained in a corrections facility in advance of his criminal trial. *Id.* at Doc. 63, attached hereto as Exhibit A. McDuff is being held at the Fannin County Jail in Bonham, Texas pending trial.

II.

ARGUMENT: THE COURT SHOULD REISSUE SUMMONS

Contemporaneously with the filing of this motion, the Commission filed a Motion to Reopen Case pursuant to the terms of the Court’s September 30, 2010 order, to permit the Commission to serve McDuff with the summons and Complaint and pursue all claims against him. In light of the fact that McDuff has been located, arrested, and returned to the United States to a location where he can be found and served, the Commission respectfully asks the Court to reissue summons to Gary L. McDuff, c/o Fannin County Jail, 2389 Silo Road, Bonham, Texas 75418, or wherever found.

III.
CONCLUSION

WHEREFORE, the Commission respectfully requests that the Court reissue summons to Defendant Gary L. McDuff, and further requests all other relief to which it may be entitled.

Respectfully submitted,

s/ Jessica B. Magee
Jennifer D. Brandt
Texas Bar No. 00796242
Jessica B. Magee
Texas Bar No. 24037757
U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
Phone: (817) 978-6465
Fax: (817) 978-4927
mageej@sec.gov

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

UNITED STATES DISTRICT COURT

EASTERN

District of

TEXAS

UNITED STATES OF AMERICA

V.

ORDER OF DETENTION PENDING TRIAL

GARY LYNN MCDUFF

Defendant

Case

Number: 4:09CR90(2)

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I—Findings of Fact

- (1) The defendant is charged with an offense described in 18 U.S.C. § 3142(f)(1) and has been convicted of a federal offense state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed - that is
 - a crime of violence as defined in 18 U.S.C. § 3156(a)(4).
 - an offense for which the maximum sentence is life imprisonment or death.
 - an offense for which a maximum term of imprisonment of ten years or more is prescribed in _____.
 - a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f)(1)(A)-(C), or comparable state or local offenses.
- (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- (3) A period of not more than five years has elapsed since the date of conviction release of the defendant from imprisonment for the offense described in finding (1).
- (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

- (1) There is probable cause to believe that the defendant has committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in _____ under 18 U.S.C. § 924(c).
- (2) The defendant has not rebutted the presumption established by finding I that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternative Findings (B)

- ✓ (1) There is a serious risk that the defendant will not appear.
- ✓ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Part II—Written Statement of Reasons for Detention

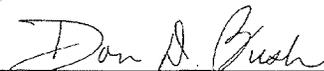
I find that the credible testimony and information submitted at the hearing establishes by clear and convincing evidence a preponderance of the evidence that

Having heard the testimony presented, the Court finds that there are no conditions the Court could set that would ensure Defendant's future appearance here or the safety of the community. According to the testimony presented, Defendant was aware of the indictment against him and remained in Mexico, evading the jurisdiction of this Court. Defendant further claims to refuse to accept the jurisdiction of the United States. Further, Defendant's conduct during the detention hearing indicated a total lack of regard for the Court, its authority, and the laws of this county. The Court finds that Defendant would not comply with any conditions it set while Defendant awaits trial. He is ordered detained.

Part III—Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

SIGNED this 18th day of June, 2012.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

GARY L. McDUFF,
GARY L. LANCASTER, and
ROBERT T. REESE,

Defendants.

:
:
:
:
:
: Civil Action No. 3:08-cv-526-L
: ECF

ORDER

This matter comes before the Court upon Plaintiff Securities and Exchange Commission's Motion to Reissue Summons. The Court, having considered the Motion, finds that it is well-founded and should be GRANTED.

IT IS THEREFORE ORDERED that clerk will reissue summons to Defendant Gary L. McDuff c/o Fannin County Jail, 2389 Silo Road, Bonham, Texas 75418, or wherever found, and that McDuff be served with the summons and Complaint in this action.

SO ORDERED.

June ____, 2012.

UNITED STATES DISTRICT JUDGE

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

GARY L. McDUFF,

Defendant.

§
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§

Civil Action No. 3:08-CV-526-L

ORDER

Before the court is Plaintiff's Motion to Reopen Case, filed June 19, 2012, and Plaintiff's Motion to Reissue Summons, also filed June 19, 2012. After consideration of the motions, record, and applicable law, the court **grants** Plaintiff's Motion to Reopen Case and Plaintiff's Motion to Reissue Summons.

Plaintiff Securities and Exchange Commission ("Commission") filed this case on March 26, 2008, alleging various violations of the federal securities laws by Defendants. Defendant Gary L. McDuff ("McDuff") is the only remaining defendant against whom the Commission has claims pending in this case. On March 27, 2008, the court entered Agreed Final Judgments against Defendants Robert T. Reese and Gary L. Lancaster.

The Commission made repeated attempts to complete service of process upon McDuff, to whom summons was first issued on March 26, 2008. McDuff filed several initial documents in this case, including a document acknowledging that he received notice of this lawsuit and stating his refusal to accept service of the summons (*See* Doc. 9). Thereafter, McDuff fled the United States to Mexico. Based on information learned by the Commission concerning McDuff's believed

whereabouts in Morelos, Mexico, the clerk reissued summons to McDuff on March 10, 2010. On September 30, 2010, the court entered an order administratively closing this case due to its age and the unsuccessful attempts to track and serve McDuff.

McDuff was indicted in the Eastern District of Texas on June 11, 2009, for conspiracy to commit wire fraud, based on the same conduct alleged in the Commission's Complaint in this action. On or about May 25, 2012, McDuff was arrested and returned to the United States. He appeared in person before the Eastern District of Texas on June 15, 2012, for arraignment, at which time he was ordered to be detained in advance of his criminal trial. McDuff is currently incarcerated in the Fannin County Jail in Bonham, Texas. Given this development and the opportunity now to locate and effectively serve McDuff, the Commission seeks to reopen the case in order to serve him with process and litigate all of its claims against him.

The court determines that the Commission's motions are well-founded and should be granted. Accordingly, the court **grants** Plaintiff's Motion to Reopen Case and Plaintiff's Motion to Reissue Summons. It is therefore **ordered** that the clerk **reopen** this action as to Defendant McDuff to permit the Commission to complete service of process and pursue all claims alleged against him. It is further **ordered** that the clerk reissue summons to Defendant Gary L. McDuff [REDACTED] [REDACTED] or wherever he may be found, and that McDuff be served with the summons and Complaint in this action.

It is so ordered this 20th day of August, 2012.

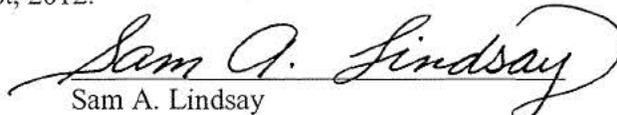

Sam A. Lindsay
United States District Judge

EXHIBIT H

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Northern District of Texas

Securities and Exchange Commission)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 3:08-cv-00526-L
)	
McDuff et al)	
<i>Defendant</i>)	

Summons in a Civil Action

TO: Gary L McDuff



A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

Jennifer Brandt
Burnett Plaza
801 Cherry Street Suite 1900
Fort Worth, TX 76102-6882

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Signature of Clerk or Deputy Clerk



DATE: 08/21/2012

Civil Action No. 3:08-cv-00526-L

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (I))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is designated
by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

other *(specify)* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

EXHIBIT I

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 3:08-cv-00526-L

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (f))

This summons for (name of individual and title, if any) GARY McDuff
was received by me on (date) 8-23-12.

I personally served the summons on the individual at (place) [REDACTED] on (date) 8-23-12; or

I left the summons at the individual's residence or usual place of abode with (name) _____, a person of suitable age and discretion who resides there, on (date) _____, and mailed a copy to the individual's last known address; or

I served the summons on (name of individual) _____, who is designated by law to accept service of process on behalf of (name of organization) _____ on (date) _____; or

I returned the summons unexecuted because _____; or

other (specify) IN ADDITION PROVIDED DOCUMENTS TO DETENTION OFFICER LEYSER

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: 8-23-12

Ralph S. Freeman
Server's signature
RALPH S. FREEMAN
PRIVATE INVESTIGATOR
Printed name and title

14232 MARSH LANE ADDISON, TX 75001
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Northern District of Texas

Securities and Exchange Commission)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 3:08-cv-00526-L
)	
McDuff et al)	
<i>Defendant</i>)	

Summons in a Civil Action

TO: Gary L McDuff



A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

Jennifer Brandt
Burnett Plaza
801 Cherry Street Suite 1900
Fort Worth , TX 76102-6882

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Signature of Clerk or Deputy Clerk



DATE: 08/21/2012

EXHIBIT J

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action: 3:08-CV-526-L
	:	ECF
GARY L. McDUFF,	:	
GARY L. LANCASTER, and	:	
ROBERT T. REESE,	:	
	:	
Defendants.	:	

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT
AS TO DEFENDANT GARY L. McDUFF
AND BRIEF IN SUPPORT**

Pursuant to Federal Rule of Civil Procedure 55(b)(2), Plaintiff Securities and Exchange Commission ("Commission") respectfully submits this memorandum of law in support of its motion for default judgment against Gary L. McDuff ("McDuff"), the last defendant remaining in this case.

**I.
SUMMARY**

The Complaint alleges that McDuff violated the federal securities laws by, among other things, offering and selling securities in unregistered offerings and by using funds raised through these offerings not, as investors were told, to invest only in highly rated debt securities, but to invest millions in Megafund Corporation Ponzi scheme that was the subject of the enforcement action and receivership styled *SEC v. Megafund Corporation, et al.*, in the Northern District of Texas (Dallas), Civil Action Number 2:05-CV-01328. The Commission properly served McDuff, who has failed to answer, plead, or otherwise defend this action.

The Complaint's allegations and the documentary evidence demonstrate the McDuff-masterminded Lancorp Financial Fund Business Trust ("Lancorp Fund") raised over \$11 million from 105 investors through fraud and that McDuff personally received at least \$136,336.18 of this sum. Accordingly, the Commission respectfully requests that the Court enter a default judgment:

- (a) permanently enjoining McDuff from violating Section 10(b) of the Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], and aiding and abetting violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)];
- (b) ordering McDuff to disgorge \$136,336.18 in ill-gotten gains derived from his violations of the federal securities laws, plus prejudgment interest of \$65,004.37; and
- (c) ordering McDuff to pay an appropriate civil money penalty.

II. STATEMENT OF FACTS

A. Procedural History

On March 26, 2008, the Commission filed its Complaint against Defendants McDuff, Gary Lancaster, and Robert Reece. *See* Doc. 1. The next day, the Court entered agreed final judgments against Lancaster and Reece that permanently enjoined each from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a)(1) of the Exchange

SEC v. McDuff, et al.

Plaintiff's Motion for Default Judgment as to Gary L. McDuff and Brief in Support

Page 2 of 21

Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, found them liable for disgorgement plus prejudgment interest, and waived payment of disgorgement, interest, or civil penalties based on their inability to pay. *See* Doc. 7, Doc. 8.

The Court first issued a summons to McDuff on March 26, 2008. *See* Doc. 5. On May 6, 2008, McDuff filed the first in a series of nonsensical documents docketed in the Court's file as "Special Appearance, Non Acceptance of Offer to Contract Entitled 'Summons.'" *See* Doc. 9. In that filing, McDuff admitted that he had received notice of the instant lawsuit but stated his refusal to accept service of the summons, claiming that he would "not consent" to these proceedings. *Id.* at p. 2. McDuff signed, dated, and fingerprinted the summons. *Id.* at p. 6. McDuff filed an amended version of the same document on May 12, 2008. *See* Doc. 10.¹

After his initial response to the lawsuit, McDuff fled to Mexico. Based on information learned by the Commission concerning McDuff's believed whereabouts in Morelos, Mexico, the Court reissued summons to McDuff on March 10, 2010. *See* Doc. 14. The Commission was unable to locate and serve McDuff in Mexico.

On September 30, 2010, the Court entered an Order administratively closing this case given its age and the unsuccessful attempts to track and serve McDuff. *See* Doc. 15. In its Order, the Court stated that it would reopen this case in the event McDuff was located and served. *Id.*

¹ McDuff was indicted in the Eastern District of Texas on June 11, 2009 for conspiracy to commit wire fraud, based on the same conduct alleged in the Commission's underlying Complaint in this action; *i.e.* his commission of a securities fraud through the Lancorp Fund, an entity he helped operate and direct. *See United States of America v. Robert Thomas Reece and Gary Lynn McDuff*, Case No. 4:09-CR-0090 at Doc. 1, Indictment. *SEC v. McDuff, et al.*

Between January 4, 2012 and April 20, 2012, McDuff appeared herein through a purported notary agent to file with this Court a new series of nonsensical documents including, but not limited to a “Tender for Setoff” and a “Default in Dishonor.”²

On or about May 25, 2012, McDuff was arrested and returned to the United States. *See United States of America v. Robert Thomas Reece and Gary Lynn McDuff*, Case No. 4:09-CR-0090 at Doc. 60. McDuff appeared in person before the Eastern District of Texas on June 15, 2012 for arraignment, at which time he was ordered to be detained in advance of his criminal trial. *Id.* at Doc. 63. McDuff is currently incarcerated in the Fannin County Jail in Bonham, Texas pending trial, which is currently set for March 2013.

Following his arrest and pre-trial detention, the Commission moved to reopen this case and reissue summons to McDuff, which the Court authorized on August 20, 2012 and August 21, 2012. *See* Docs. 28, 29, 32, 33. The Commission successfully served McDuff at the Fannin County Jail on August 23, 2012 and filed the Proof of Service on August 29, 2012. *See* Doc. 34.

McDuff’s deadline to answer the Complaint was September 13, 2012. *See* FED. R. CIV. P. 12. Since being served on August 23, 2012, McDuff has not answered or otherwise responded to the Complaint, nor made any effort to defend this action. Consequently, the clerk made an entry of default as to McDuff on September 24, 2012. *See* Doc. 38.

B. The Complaint’s Uncontested Factual Allegations

Defendant created the Lancorp Fund in March 2003 at McDuff’s direction. Complaint ¶ 9. The Lancorp Fund began offering securities on March 17, 2003. *Id.* ¶ 10. According to its private placement memorandum (“PPM”), the Lancorp Fund was an “unregistered closed-end non-diversified management investment company” that would “not be managed like a typical

² Benton Hall’s notary license was revoked by the State of Arizona on August 14, 2012. *SEC v. McDuff, et al.*
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closed-end investment company.” *Id.* ¶ 11. Instead, the Lancorp Fund would be internally managed by the trustees (i.e., Lancaster) and not by a separate investment adviser. *Id.* The PPM stated that the Lancorp Fund was allowed to invest only in original issue debt securities rated at least “A+” by Standard & Poor’s Corporation or “A1” by Moody’s Investor Service. *Id.* Additionally, the PPM falsely stated that Lancaster was “an investment adviser registered with the Commission under the Investment Advisers Act of 1940, as amended.” *Id.*

The PPM claimed that no commissions would be paid on the sale of investor shares and that after the fund’s trustee (Lancaster) was compensated, any remaining quarterly income would be distributed as “investor returns” to the fund’s shareholders. *Id.* ¶ 12. Investment application materials asked potential investors whether they were accredited and, if so, to “check the box.” *Id.* Investors were not provided with any financial information, audited or otherwise. *Id.*

The Lancorp Fund was offered to investors nationwide through a general solicitation advertised in at least one investor periodical. Through the Lancorp Fund, Defendants raised approximately \$11 million from 105 investors, at least 37 of whom were unaccredited. *Id.* ¶ 13. Reece and McDuff referred all of the investors. *Id.*

In January 2005, McDuff introduced Defendant Lancaster to the Megafund investment opportunity. *Id.* ¶ 14. McDuff showed Lancaster the Megafund offering documents, which specified that investor funds would be placed in “an account at a major U.S. Brokerage firm” where an unnamed “Trader” would engage in “arbitrage” transactions involving the purchase and sale of “Treasury bills, certificates of deposit, stocks, bonds, securities and derivatives of such on margin or otherwise . . . and Tri-Party Repurchase Agreement transactions.” *Id.* The Megafund materials went on to promise that investors would receive a “ten percent profit” per month and that their principal investment would never be at risk. *Id.* On February 8, 2005 the Lancorp

Fund invested \$5 million in the Megafund offering, even though such an investment was clearly outside the scope of permissible investments under the Lancorp Fund's PPM. *Id.*

McDuff and Reese were not permitted to be compensated for referring investors to the Lancorp Fund because (1) the Lancorp Fund PPM explicitly stated that no commissions would be paid and (2) McDuff and Reese were not registered representatives and therefore could not receive transaction-based compensation. *Id.* ¶ 15. Shortly after the Lancorp Fund's initial investment in Megafund, however, McDuff devised a plan to circumvent the Lancorp Fund's proscription on the payment of commissions. *Id.*

McDuff caused an entity he controlled, MexBank S.A. de C.V. ("MexBank"), to enter into a "joint-venture" profit-sharing arrangement with Lancorp Financial Group LLC, which Defendants controlled. *Id.* ¶ 16. Lancorp LLC also entered into an agreement with the Lancorp Fund, which provided that Lancorp LLC would act as an investment adviser to the Lancorp Fund. *Id.* The joint-venture agreement set forth that all monthly gross profits payable by Megafund to the Lancorp Fund would be divided among Lancorp LLC and MexBank. *Id.* As a result, when Megafund started making "profit" payments, which were in reality Ponzi payments, to the Lancorp Fund, McDuff and Reese were able to receive compensation, through MexBank, for bringing investors to the Lancorp Fund. *Id.* Of course, none of this was ever disclosed to Lancorp Fund investors. *Id.*

Between June 2004 and May 2005, Megafund raised over \$14 million from investors, including over \$9.3 million from the Lancorp Fund. *Id.* ¶ 17. No money or profits were distributed to Lancorp Fund investors. *Id.* ¶ 19. As previously stated, Megafund Corporation and its officers and directors were the Defendants in a fully-litigated and now-closed SEC enforcement action and receivership in this district.

Of the funds they raised through fraud and received back as Ponzi payments from Megafund, Lancaster personally received \$336,229, which amount he was found liable for in disgorgement but released from the obligation of payment due to his financial condition. *Id.*; *see also* Doc. 7. Reece was also found liable for disgorgement, payment of which was also waived by the Court based on his stated inability to pay. *See* Doc. 8. Finally, McDuff received at least \$136,336.18 of the ill-gotten funds he and Defendants raised and/or received as Ponzi payments from Megafund.³

III. **ARGUMENT**

A. The Default Judgment Standard

The entry of a default judgment is left to the “sound judicial discretion” of the court. *See Mason v. Lister*, 562 F.2d 343, 345 (5th Cir. 1977). The court’s exercise of discretion in deciding a motion for default judgment is given deference upon review. *James v. Frame*, 6 F.3d 307, 310 (5th Cir. 1993). Default judgments are appropriate when, as here, “the adversary process has been halted because of [an] essentially unresponsive party.” *Sun Bank of Ocala v. Pelican Homestead & Savings Ass’n*, 874 F.2d 274, 276 (5th Cir. 1989) (quoting *H.F. Livermore Corp. v. Aktiengesellschaft Gebrüder Loepfe*, 432 F.2d 689, 691 (D.C. Cir. 1970)).

Under Fifth Circuit law, there are three steps to obtaining a default judgment: (1) default; (2) entry of default; and (3) default judgment. *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996) (citing FED. R. CIV. P. 55(a)). In determining whether to enter a default judgment, the Court should accept as true all of the factual allegations in

³ The Complaint alleges that McDuff received \$
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the Complaint, except those relating to damages. *See Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *United States v. Shipco Gen., Inc.*, 814 F.2d 1011, 1014 (5th Cir. 1987).

An appropriate damages award remains to be established by proof unless the amount is liquidated or susceptible of mathematical computation. *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979). “Where the amount of damages and/or costs can be determined with certainty by reference to the pleadings and supporting documents and where a hearing would not be beneficial, a hearing is unnecessary.” *James*, 6 F.3d at 310; *see also United Artists Corp.*, 605 at 857 (holding that a damages hearing is not required if there is “a demonstration by detailed affidavits establishing the necessary facts”). The Commission is “entitled to all reasonable inferences from the evidence offered.” *United States v. Shipco Gen., Inc.*, 814 F.2d 1011, 1014 (5th Cir. 1987).

B. The Complaint Establishes that McDuff Violated The Federal Securities Laws.

Well-pleaded allegations contained in a Complaint are taken as admitted on a motion for a default judgment. *Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (citing *Thomson v. Wooster*, 114 U.S. 104, 105 (1884)). The allegations in the Complaint establish that McDuff engaged in the unregistered offer and sale of securities in violation of Section 5(a) and 5(c) of the Securities Act.

The allegations also establish that McDuff engaged in fraud in connection with the offer, purchase, and sale of securities in violation of the antifraud provisions of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

Further, the allegations establish that McDuff failed to register as a broker-dealer in violation of Section 15(a)(1) of the Exchange Act.

Finally, the allegations establish that McDuff aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act.

1. McDuff Violated the Registration Provisions of Sections 5(a) and 5(c) of the Securities Act.

Sections 5(a) and 5(c) of the Securities Act prohibit the unregistered offer and sale of securities in interstate commerce. *SEC v. Continental Tobacco Co.*, 463 F.2d 137, 154-155 (5th Cir. 1972). A *prima facie* case of a Section 5 violation is established by showing: (1) defendants offered or sold securities; (2) no registration was in effect or filed with the Commission for those securities; and (3) interstate transportation or communication or the mails were used in connection with the offer and sale. *See id.* Once a *prima facie* case has been made, the defendant bears the burden of proving the applicability of an exemption. *SEC v. Ralston Purina*, 346 U.S. 119, 126 (1953); *SEC v. Continental Tobacco Co.*, 463 F.2d 137, 156 (5th Cir. 1972). The investments in the Lancorp Fund offered by McDuff and the other Defendants were securities in the form of investment contracts for which no registration statement was in effect or filed with the Commission. *See* Complaint, ¶¶ 34-38. Furthermore, McDuff and others raised nearly \$11 Million through a nationwide solicitation of the public using the mails, internet, and other means of interstate commerce including, but not limited to, print advertisements in investor periodicals. *Id.* ¶¶ 13, 34-38; *see SEC v. Continental Tobacco Co.*, 463 F.2d 137, 145 (5th Cir. 1972) (defendant violated Section 5 because “[i]nstruments of interstate commerce or the mails were employed in connection with these transactions”); *SEC v. ConnectAJet.com, Inc.*, 3:09-CV-1742-B, 2011 WL 5509896, at *3 (N.D. Tex. Nov. 9, 2011) (Boyle, J.).

While McDuff bears the burden of proving the applicability of an exemption from registration, *see Continental Tobacco Co.*, 463 F.2d at 156, the Complaint alleged facts demonstrating that no exemption was applicable including that McDuff and others generally solicited prospective investors across the country, investors were not provided with any financial information or vetted for suitability, and never filed a registration statement with the

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Commission. *See* Complaint, ¶¶ 12-13, 34-38. Accordingly, McDuff violated Sections 5(a) and 5(c) of the Securities Act.

2. McDuff Committed Securities Fraud in Violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Section 17(a) of the Securities Act prohibits fraud in the offer and sale of securities. Similarly, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraud in connection with the purchase or sale of any security. For liability to attach under these “antifraud provisions” of the securities laws, a Defendant must make a material misstatement or omission of fact. The test for materiality is whether there is a substantial likelihood that a reasonable investor would consider the information important to his investment decision, and would view it as having significantly altered the total mix of available information. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

McDuff violated these anti-fraud provisions by making misrepresentations of material facts concerning the investments offered in the Lancorp Fund. *See Basic, Inc. v. Levinson*, 485 U. S. 224, 231-32 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U. S. 438, 449 (1976). McDuff participated in the creation and content of the PPM, which represented that investment in the Lancorp Fund was safe and profitable, and that the Fund would be “internally managed” by “trustees” with a goal of “maximizing the protection of investors’ funds” and that such funds would only be invested in “A+” rated debt securities. *See* Complaint, ¶¶ 10-11. *See Doran v. Petroleum Mgmt. Corp.*, 545 F.2d 893, 900 (5th Cir. 1977) (information about size of the offering, and manner of the offering is material to decision to invest). To the contrary, McDuff persuaded Defendant Lancaster to transfer \$5 Million in investor funds to Megafund, even

though such a transfer clearly fell outside the investment parameters enumerated in the Lancorp Fund's Private Placement Memorandum. *Id.*, see also Complaint ¶ 14. Further, through a plan he personally devised, McDuff received investor funds through a joint-venture arrangement he orchestrated between Lancorp LLC and MexBank, entities he directed or controlled. *SEC v. Chemical Trust*, 2000 U.S. Dist. LEXIS 19786 *28 (S.D. Fla. 2001) (use of investor proceeds "undoubtedly would have been material to investors"), see also Complaint ¶ 15-16.

Violations of Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder also require a showing of *scienter*. *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980). *Scienter* is a "mental state embracing intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). In the Fifth Circuit, *scienter* may be established by a showing of recklessness. *Southland Sec. Corp. v. Inspire Ins. Solutions, Inc.*, 365 F.3d 353, 366 (5th Cir. 2004) (defining *scienter* as an "'intent to deceive, manipulate, or defraud' or 'that severe recklessness' in which the 'danger of misleading buyers or sellers is either known to the defendant or is so obvious that the defendant must have been aware of it.'" (quoting *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 961-62 (5th Cir. 1981)). Proof of recklessness may be inferred from circumstantial evidence. *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390-91, n.30 (1983).

The uncontested allegations of the Complaint establish that McDuff acted with a high degree of *scienter*. He recruited Lancaster and Reece to assist in offering and selling investments in the Lancorp Fund, arranged preparation of the Private Placement Memorandum, solicited investors with promises of a low-risk, high-return investment, and knowingly directed the transfer of investor funds to Megafund and, through a clever joint venture scheme concocted with MexBank, routed funds to himself. Complaint ¶¶ 10-19. Because he was intimately

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involved in the business, McDuff knew, or was reckless in not knowing, that he was soliciting investors without being registered as a broker or dealer, that the Lancorp Fund was violating its own investment parameters and was transferring and investing money to affiliates without investor knowledge, and that he personally was receiving funds without investor awareness and in violation of the law. For all of these reasons, McDuff violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

3. McDuff Violated the Broker-Dealer Registration Provisions of Section 15(a)(1) of the Exchange Act.

Under Section 15(a)(1) of the Exchange Act, brokers and dealers who effect securities transactions through interstate commerce must register with the Commission. *See* 15 U.S.C. § 78o(a). A broker is “any person engaged in the business of effecting transactions in securities for the accounts of others.” 15 U.S.C. § 78c(a)(4). To determine whether a person “effected transactions,” courts consider several factors, such as whether the person (1) solicited investors to purchase securities, (2) was involved in negotiations between the issuer and the investor, and (3) received transaction-related compensation. *SEC v. Offill*, 3:07-CV-1643, 2012 WL 246061, at *7 (N.D. Tex. Jan. 26, 2012) (Fitzwater, C.J.); *see also SEC v. Martino*, 255 F.Supp.2d 268, 283 (S.D.N.Y. 2003). Proof of *scienter* is not required. *Eastside Church of Christ v. Nat'l Plan, Inc.*, 391 F.2d 357, 361-62 (5th Cir. 1968); *Offill*, 2012 WL 246061, at *6. In this case, McDuff acted as a broker in connection with offer and sale of investments in the Lancorp Fund because he actively engaged in the sale of the investment contracts, communicated with investors, and received commissions. *See Offill*, 2012 WL 246061, at *6; *Martino*, 255 F.Supp.2d at 283; *SEC v. Kenton Capital, Ltd.*, 69 F.Supp.2d 1, 12 (D.D.C. 1998).

4. McDuff Aided and Abetted Defendant Lancaster's Violations of Sections 206(1) and 206(2) of the Advisers Act.

In addition to committing his own violations, McDuff aided and abetted Defendant Lancaster's violations of Sections 206(1) and 206(2) of the Advisers Act. *See* 15 U.S.C. §§ 80b-

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6(1), (2). To establish liability for aiding and abetting violations of the antifraud provisions of the Advisers Act, the Commission must show “(1) that the primary party committed a securities violation; (2) that the aider and abettor had general awareness of its role in the violation; and (3) that the aider and abettor knowingly rendered substantial assistance in furtherance of it.” *Abbott v. Equity Group, Inc.*, 2 F.3d 613, 621 (5th Cir. 1993) *cert. denied*, 510 U.S. 1177 (1994) (internal quotations omitted); *see also In the Matter of Monetta Fin. Servs. Inc.*, AP File No. 3-9546, Rel. No. IA-2136, 2003 WL 21310330, at *4 (applying the same factors to violations of the Advisers Act); *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir.1992) (applying the same factors to violations of the Advisers Act).

Lancaster violated Sections 206(1) and 206(2) by using the mails and means of interstate commerce, while acting as an investment adviser, to intentionally, knowingly, or recklessly (a) employ devices, schemes, and artifices to defraud clients or prospective clients; and (b) to engage in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients. Complaint ¶ 43. McDuff provided substantial assistance to Lancaster in these violations. *Id.* ¶ 44. Specifically, McDuff (1) aided the preparation and distribution of a fraudulent Private Placement Memorandum for the Lancorp Fund, *id.* ¶ 10-12, (2) aided Lancaster in solicitation and raising of investment funds for the Lancorp Fund, *id.* ¶ 13, and (3) aided Lancaster in the Lancorp Fund’s participation in the fraudulent Megafund investment, *id.* ¶ 14-18. McDuff knew that his substantial assistance to Lancaster was part of an overall course of conduct that was illegal. *Id.* ¶ 44. Therefore, McDuff is liable for aiding and abetting violations of Sections 206(1) and 206(2) of the Investment Advisers Act.

C. The Commission is Entitled to the Relief Sought.

The Commission is entitled to the forms of relief pleaded for in its Complaint, which are addressed separately below.

1. Entry of a Permanent Injunction is Appropriate.

Section 20(b) of the Securities Act, Section 21(d) of the Exchange Act, and Section 209(d) of the Advisers Act provide that, upon a proper showing, a permanent injunction shall be granted in enforcement actions brought by the Commission. *See* 15 U.S.C. §77t(b); 15 U.S.C. § 78u(d)(1); 15 U.S.C. §§ 80b-9. The Commission's burden is met when the evidence establishes a "reasonable likelihood" of a future violation of the securities laws. *SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir. 1981); *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980); *see also SEC v. Koracorp Industries, Inc.*, 575 F.2d 692 (9th Cir. 1978), *cert. denied sub nom., Helfat v. SEC*, 439 U.S. 953 (1978). "[T]he Commission is entitled to prevail when the inferences flowing from the defendant's prior illegal conduct, viewed in light of present circumstances, betoken a "reasonable likelihood" of future transgressions." *SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir. 1981); *see, e. g., SEC v. Murphy*, 626 F.2d 633 (9th Cir.1980); *SEC v. Bonastia*, 614 F.2d 908 (3rd Cir.1980); *SEC v. Caterinicchia*, 613 F.2d 102 (5th Cir.1980); *SEC v. Blatt*, 583 F.2d 1325 (5th Cir.1973). In predicting the likelihood of future violations, the Court should evaluate the totality of the circumstances. *SEC v. Zale Corp.*, 650 F.2d at 720.

In imposing a permanent injunction, courts consider a number of factors, including the (1) egregiousness of the defendant's conduct, (2) isolated or recurrent nature of the violation, (3) degree of *scienter*, (4) sincerity of defendant's recognition of his transgression, and (5) likelihood of the defendant's job providing opportunities for future violations. *SEC v. Gann*, 565 F.3d 932, 940 (5th Cir. 2009). The mere cessation of the illegal conduct does not foreclose injunctive

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relief. *SEC v. Murphy*, 626 F.2d at 655. In *SEC v. Gann*, the Court of Appeals for the Fifth Circuit held that a defendant's past illegal conduct raised a presumption that the defendant would commit future violations—justifying the grant of an injunction—even though the defendant's job no longer involved selling securities.

All of these factors support entry of a permanent injunction against McDuff. McDuff's violations were multiple, continued, and egregious. McDuff acted with *scienter* in the extreme. McDuff engaged in the unregistered offer and sale of securities in violation of Section 5(a) and 5(c) of the Securities Act; engaged in fraud in connection with the offer or sale of securities in violation of the antifraud provisions of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder; failed to register as a broker-dealer in violation of Section 15(a)(1) of the Exchange Act; and aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. Finally, when the SEC charged McDuff, he fled to Mexico, where he hid out for years before being apprehended and extradited. For these reasons, this Court should enter a permanent injunction against McDuff enjoining him from future violations of these federal securities laws.

2. Disgorgement and Prejudgment Interest are Warranted.

As demonstrated throughout the Complaint, McDuff orchestrated the fraudulent scheme by which he, Lancaster and Reece raised \$11 million from investors in the Lancorp Fund. Complaint at ¶¶ 1 – 19. Based on these allegations, which are deemed true, the Court should find that McDuff violated the federal securities laws, should order disgorgement of all ill-gotten gains, and should determine the amount of disgorgement.⁴

⁴ Disgorgement is “meant to prevent the wrongdoer from enriching himself by his wrongs.” *Huffman*, 996 F.2d at 802-03 (5th Cir. 1993); *see also AMX*, 7 F.3d at 75; *SEC v. Blatt*, 583 F.2d 1325, 1335 (5th Cir. 1978). By preventing unjust enrichment, disgorgement also has the effect of “detering violations of law.” *Commodity Futures Trading Com'n v. British American Commodity Options Corp.*, 788 F.2d 92, 94 (2nd Cir.), *cert. denied*, 479 U.S. 853 *SEC v. McDuff, et al.*

“The District Court has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged.” *SEC v. Huffman*, 996 F.2d 800, 802 (5th Cir. 1993); *see also SEC v. AMX, Int'l, Inc.*, 7 F.3d 71, 73 (5th Cir. 1993); *SEC v. AmeriFirst Funding, Inc.*, 2008 U.S. Dist. LEXIS 36782 (N.D. Tex. 2008); *SEC v. Reynolds*, 2008 U.S. Dist. LEXIS 65669 (N.D. Tex. 2008). The law does not require precision in determining the proper amount of disgorgement. Rather, “disgorgement need only be a reasonable approximation of profits causally connected to the violation.” *Id.*; *see also Allstate Ins. Co v. Receivable Fin. Co. LLC*, 501 F.3d 398, 413 (5th Cir. 2007) (“In actions brought by the SEC involving a securities violation, ‘disgorgement need only be a reasonable approximation of profits causally connected to the violation.’) *citing SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989). As one court explained:

If exact information were obtainable at negligible cost, we would not hesitate to impose upon the government a strict burden to produce that data to measure the precise amount of the ill-gotten gains. Unfortunately, we encounter imprecision and imperfect information. . . . Rules for calculating disgorgement must recognize that separating legal from illegal profits exactly may at times be a near-impossible task.

First City, 890 F.2d at 1231.

Once the Commission presents evidence reasonably approximating the amount of ill-gotten gains, the burden of proof shifts to the defendant. *See SEC v. ConnectAJet.com, Inc.*, 2011 U.S. Dist. LEXIS 130215, 2011 WL 5509896, at *7 (N.D. Tex. Nov. 9, 2011); *AmeriFirst Funding, Inc.*, 2008 U.S. Dist. LEXIS at *4; *First City*, 890 F.2d at 1232; *see also SEC v. Hughes Capital Corp.*, 917 F. Supp. 1080, 1085 (D.N.J. 1996), *aff'd*, 124 F.3d 449 (3rd Cir. 1997). The defendant is then “obliged clearly to demonstrate that the disgorgement figure [is] not a reasonable approximation.”

(1986). “The deterrent effect of an SEC enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits.” *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1104 (2nd Cir. 1972).

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First City, 890 F.2d at 1232; *see also Reynolds*, 2008 U.S. Dist. LEXIS at *7; *SEC v. Benson*, 657 F. Supp. 1122, 1133 (S.D.N.Y. 1987). In determining an approximate amount of ill-gotten profits, “the risk of uncertainty should fall on the wrongdoer whose illegal conduct created the uncertainty.” *Hughes*, 917 F. Supp. at 1085; *SEC v. Strauss*, 2011 U.S. Dist. LEXIS 38248 (N.D. Miss. 2011). “[D]oubts are to be resolved against the defrauding party.” *SEC v. MacDonald*, 699 F.2d 47, 55 (1st Cir. 1983); *see also Hughes*, 917 F. Supp. at 1085.

Based on the Commission’s Complaint and the tracing of funds performed across bank records of Megafund, Lancorp, and McDuff, it is clear that McDuff received at least \$136,336.18 from his participation in the Lancorp Fund scheme. *See* Complaint at ¶ 19; *see also* Declaration of Michael Quilling, attached hereto as Exhibit A and incorporated herein, at ¶ 18. Therefore, this sum presents a reasonable approximation of disgorgement to be assessed against McDuff, as it represents the gross amount of his ill-gotten profits. No affirmative evidence in the record disputes the reasonableness of this amount, and any risk of uncertainty should fall on McDuff. *SEC v. Harris*, 2012 U.S. Dist. LEXIS 31394 (N.D. Tex. Mar. 7, 2012) (citing *SEC v. Patel*, 61 F.3d 137, 140 (2d Cir. 1995)).

It is well-settled that Courts may add prejudgment interest to a defendant’s disgorgement amount to prevent him from benefitting from the use of his ill-gotten gains interest free. *SEC v. Blatt*, 583 F.2d 1325 (5th Cir. 1978). Whether to award prejudgment interest is within the district court’s discretion. *SEC v. United Energy Partners, Inc.*, 88 F. App’x 744, 747 (5th Cir.) (per curiam), *cert. denied sub nom. Quinn v. SEC*, 543 U.S. 1034 (2004); *SEC v. Gunn*, 2010 U.S. Dist. LEXIS 88164 (N.D. Tex. 2010).

When, as here, a wrongdoer enjoyed access to funds over a prolonged period as a result of the wrongdoing, ordering the wrongdoer to pay prejudgment interest is consistent with the equitable

purpose of the remedy of disgorgement. *See Hughes*, 917 F. Supp. at 1090. In *Hughes Capital*, the district court explained its decision to require prejudgment interest as part of the disgorgement amount:

It comports with the fundamental notions of fairness to award prejudgment interest. The defendants had the benefit of nearly \$2 million dollars [sic] for the nine and one-half years between the fraud and today's disgorgement order. In order to deprive the defendants of their unjust enrichment, the court orders the defendants to disgorge . . . prejudgment interest.

Id.

An order for prejudgment interest against McDuff is proper in this case for the same reasons. By violating the securities laws, McDuff wrongfully aided Defendants, the Lancorp Fund, Megafund Corporation and others in obtaining millions of dollars from investors and thereafter used the funds he received from the time of the misappropriation to the present. For McDuff to enjoy the benefits of investor funds during that time period offends basic principles of justice and equity.

The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in enforcement actions such as this. That rate of interest “reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendant derived from its fraud.” *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1476 (2d Cir. N.Y. 1996). Based on a principal disgorgement amount of \$258,479.69, application of the tax underpayment rate from July 5, 2005 (the date alleged in the Complaint by which McDuff had received the ill-gotten funds) results in a total prejudgment interest amount of \$65,004.37. *See* Declaration of Jessica B. Magee, attached hereto as Exhibit B and incorporated herein. *See also SEC v. Platforms Wireless Int'l Corp.*, 2010 U.S. App. LEXIS 15328 (9th Cir. 2010) (district court did not abuse its discretion by imposing prejudgment interest from the date securities were sold, as “defendants plainly had the

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Plaintiff's Motion for Default Judgment as to Gary L. McDuff and Brief in Support
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use of their unlawful profits for the entire period.”); *SEC v. Razmilovic*, 2011 U.S. Dist. LEXIS 113447 (E.D.N.Y. 2011) (because defendant “had the use of [the] unlawful profits for the entire period,” he was liable for prejudgment interest on the entire amount of his ill-gotten gains for the entire period from the time of his unlawful gains to the entry of judgment).

3. Given The Nature and Extent of His Misconduct, The Court Should Also Order McDuff to Pay a Third-Tier Civil Penalty and Should Set The Amount of the Penalty.

McDuff’s violations of the securities laws involved fraud and deceit, and directly caused the loss of \$11 million that the Lancorp Fund’s investors were never repaid. *See* Complaint, at ¶¶ 1-19. Accordingly, the Commission requests that the Court order each McDuff to pay a third-tier civil penalty.

Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act, and Section 209(e) of the Advisers Act authorize the Commission to seek, and the Court to impose, a third-tier penalty if the defendant’s violation “involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement,” and the violation “directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.” *See* 15 U.S.C. § 77t(d); 15 U.S.C. § 78u(d)(3); 15 U.S.C. § 80b-9(e); and 17 C.F.R. 201.1004 (increasing statutory amounts to reflect inflation). For individuals, these provisions set forth a maximum penalty for each third-tier violation as the greater of \$150,000 or the defendant’s gross amount of pecuniary gain as a result of each violation. Thus, under the third tier, McDuff’s civil penalty can range from \$0 up to the low maximum of \$150,000 per violation, or the high maximum of \$136,336.18, the gross amount of his pecuniary gain

Although the statutory tier determines the maximum penalty allowed per violation, the actual amount of the penalty to be imposed is left to the Court’s discretion. *See SEC v. Kern*,

SEC v. McDuff, et al.

Plaintiff’s Motion for Default Judgment as to Gary L. McDuff and Brief in Support
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425 F.3d 143, 153 (2nd Cir. 2005); *SEC v. Universal Express, Inc.*, 646 F. Supp. 2d 552, 567 (S.D.N.Y. 2009). The following factors are relevant in determining whether a civil penalty is appropriate and, if so, in what amount: “(1) the egregiousness of the defendant’s conduct; (2) the degree of the defendant’s scienter; (3) whether the defendant’s conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant’s conduct was isolated or recurrent; (5) whether the defendant has admitted wrongdoing; and (6) whether the penalty should be reduced due to the defendant’s demonstrated current and future financial condition.” *SEC v. Razmilovic*, 2011 U.S. Dist. LEXIS 113447 (E.D.N.Y. 2011); *SEC v. Colonial Inv. Mgmt. LLC*, 659 F. Supp. 2d 467, 503 (S.D.N.Y. 2009); *See also United States SEC v. Snyder*, 2006 U.S. Dist. LEXIS 81830 (S.D. Tex. 2006).

Based on these factors, the Commission moves the Court to determine the specific penalty amounts to be paid by McDuff in accordance with the statutory ranges provided above.

IV. **CONCLUSION**

For the foregoing reasons, the Commission respectfully requests that the Court grant this motion and enter a Final Judgment as to Defendant Gary L. McDuff:

- (a) permanently enjoining him from future violations of Section 10(b) of the Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], and aiding and abetting violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and (2)];

- (b) ordering him to pay disgorgement in the amount of \$136,336.18 plus prejudgment interest in the amount of \$65,004.37; and
- (c) ordering him to pay a third-tier civil penalty in an amount deemed just by the Court. A proposed Final Judgment giving effect to this requested relief is submitted herewith.

Dated: February 19, 2013

Respectfully submitted,

/s/ Jessica B. Magee

Jessica B. Magee

Texas Bar No. 24037757

Jennifer D. Brandt

Texas Bar No. 00796242

U.S. Securities and Exchange Commission

Burnett Plaza, Suite 1900

801 Cherry Street, Unit 18

Fort Worth, Texas 76102

Phone: (817) 978-6465

Fax: (817) 978-4927

mageej@sec.gov

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action:
	:	3:08-CV-526-L
GARY L. McDUFF,	:	ECF
GARY L. LANCASTER, and	:	
ROBERT T. REESE,	:	
	:	
Defendants.	:	

DECLARATION OF MICHAEL J. QUILLING

I, Michael J. Quilling, do hereby declare under penalty of perjury and in accordance with 28 U.S.C. § 1746, that the following is true and correct, that this Declaration is made of my own personal knowledge, and that I am competent to testify as to the matters stated herein.

1. This Declaration is offered in support of the Securities and Exchange Commission’s (“Commission”) *Motion for Default Judgment as to Gary Lynn McDuff and Brief in Support*, filed simultaneously herewith.

2. On July 1, 2005, the Commission filed *SEC v. Megafund Corporation, et al.*, Civil Action No. 3:05-CV-1328-L (N.D.Tex). In its Complaint, the Commission requested ~~appointment of a Receiver. The Court appointed me as Receiver for Megafund Corporation~~ (“Megafund”) and others. *See id.* at *Order Appointing Temporary Receiver* [Doc. 9], as amended July 19, 2005 [Doc. 36].

3. In January 2006, the Receivership was expanded to include Lancorp Financial Group,

LLC and Lancorp Financial Fund Business Trust (collectively, "Lancorp"), for whom I was also appointed Receiver. *See id.* at *Agreed Order Expanding Receivership and Appointing Receiver* [Doc. 84], as amended March 1, 2006 [Doc. 98].

4. From my review of documents and materials collected in the Receivership, it is clear that Gary Lynn McDuff ("McDuff") helped create Lancorp and was centrally involved in Lancorp's affairs.

5. In conducting the Receivership, I determined that McDuff acted in his individual capacity as well as d/b/a Secured Clearing Corp., First Global Foundation, Southern Trust Co. and MexBank S.A. de C.V. (collectively, "McDuff").

6. As Receiver, I investigated the businesses, transactions, assets, liabilities, books, and records of Megafund, Lancorp, and others. I also interviewed witnesses, took depositions, and reviewed all available documents concerning these entities' underlying investment programs.

7. My investigation, which included a detailed review of Megafund and Lancorp's bank account records, confirmed that Megafund operated as a classic Ponzi scheme.¹ In its simplest form, a Ponzi scheme exists when money from new investors is used to pay "profits" to earlier investors, without the operation of an actual revenue-producing business.

8. I took possession of Megafund's bank account records at Wells Fargo Bank and South Trust Bank, where all known investor monies were received. Because they are voluminous, the Receiver's accountant prepared spreadsheet summaries of same, true and correct

copies of which are attached hereto as Exhibits 1 and 2. These records clearly establish that (a) virtually all of Megafund's revenue consisted of investor funds; (b) investment funds were comingled and used for illegitimate, non-business expenses; and (c) all investment "returns" to

¹ In *Quilling v. Humphries*, Civil Action No. 3:06-CV-299, the N.D. Tex. (Dallas) determined that Megafund was "a classic Ponzi scheme." *See Findings and Recommendation* [Doc. 23], at p. 6, as adopted by the Court's *Opinion and Order* therein [Doc. 33].

earlier contributors were Ponzi payments from the commingled investment funds raised from later investors.

9. According to Megafund records, Gary Lynn McDuff ("McDuff") introduced at least 100 investors to the Megafund and Lancorp investment schemes.

10. Lancorp sent \$9,365,000 to Megafund by May 2005, making it Megafund's largest investor. *See* Exhibit 1 hereto.

11. For his efforts, McDuff received \$304,272.58 as his share of Megafund's Ponzi payments to Lancorp. McDuff distributed \$45,792.89 to Robert Reece, another Defendant in the instant lawsuit, and retained the remaining \$258,479.69 as his own ill-gotten gains.

12. McDuff went to great lengths to launder the \$304,272.58 through various accounts. However, through my review of account records I was able to clearly trace those funds back to McDuff and his associates. The results of this work are summarized in the diagram attached hereto as Exhibit 3, which reflects information contained in the records of Megafund's Wells Fargo and South Trust accounts, Lancorp's Bank of America account, and various accounts maintained by McDuff and his associates through Cash Cards International ("CCI").² Because these accounts are voluminous, spreadsheet summaries are attached hereto as Exhibits 4-9.

13. Exhibit 3 hereto shows that two payments totaling \$304,272.58 were wired according to McDuff's instructions as compensation for recruiting investors. Without question, these payments can be traced directly to Megafund and Lancorp. Specifically, Exhibit 3 shows that (a)

Lancorp sent \$128,437,58 to MexBank S.A. de C.V. – a McDuff sham entity – on March 29,

² CCI is an online depository that allows users to create and manage web-based accounts called V-Cash Accounts, that can receive and transfer funds. CCI assigns customers a "portal" under which the customer's accounts are created.

2005; and (b) Megafund sent \$175,835 to MexBank S.A. de C.V. on April 26, 2005. These transfers are also evidenced by two wire instruction documents attached hereto as Exhibit 10.³

14. The \$304,272.58, therefore, constitute ill-gotten gains received by McDuff as party to Lancorp's fraud scheme with Megafund.

15. From the \$304,272.58 received, McDuff distributed \$45,792.89 to Robert Reece. See Exhibit 5.

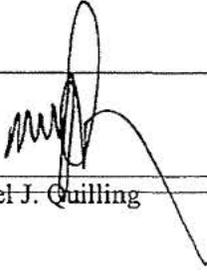
16. Of the \$258,479.69 remaining after the distribution to Robert Reece, McDuff used \$152,401.55 to purchase a house from the Tipton Living Trust for his son Shiloh McDuff, which was next door to McDuff's own house in Deer Park, Texas. See Exhibit 9.

17. Subsequent to the Receivership's judgment against McDuff in *Quilling v. McDuff, et al.*, Civil Action No. 3:06-CV-0959-L, in the United States District Court for the Northern District of Texas (Dallas), I recovered that house and sold it for a net return of \$122,143.51 to the Receivership. See Final Report of the Megafund Receivership Estate's Cash Receipts and Disbursements, attached hereto as Exhibit 11. Those proceeds were part of the distribution to the defrauded Megafund and Lancorp investors.

18. Hence, the total sum retained by McDuff from the funds ill-gotten through fraud total \$136,336.18.

Further Declarant Sayeth Not.

Signed this 19 day of February 2013.



Michael J. Quilling

³ The Bank of America Funds Transfer Request and Authorization document in Exhibit 10 is largely illegible, but was provided to the Receiver as such.

EXHIBIT A-1

EXHIBIT A-2

EXHIBIT A-3

EXHIBIT "A-3"

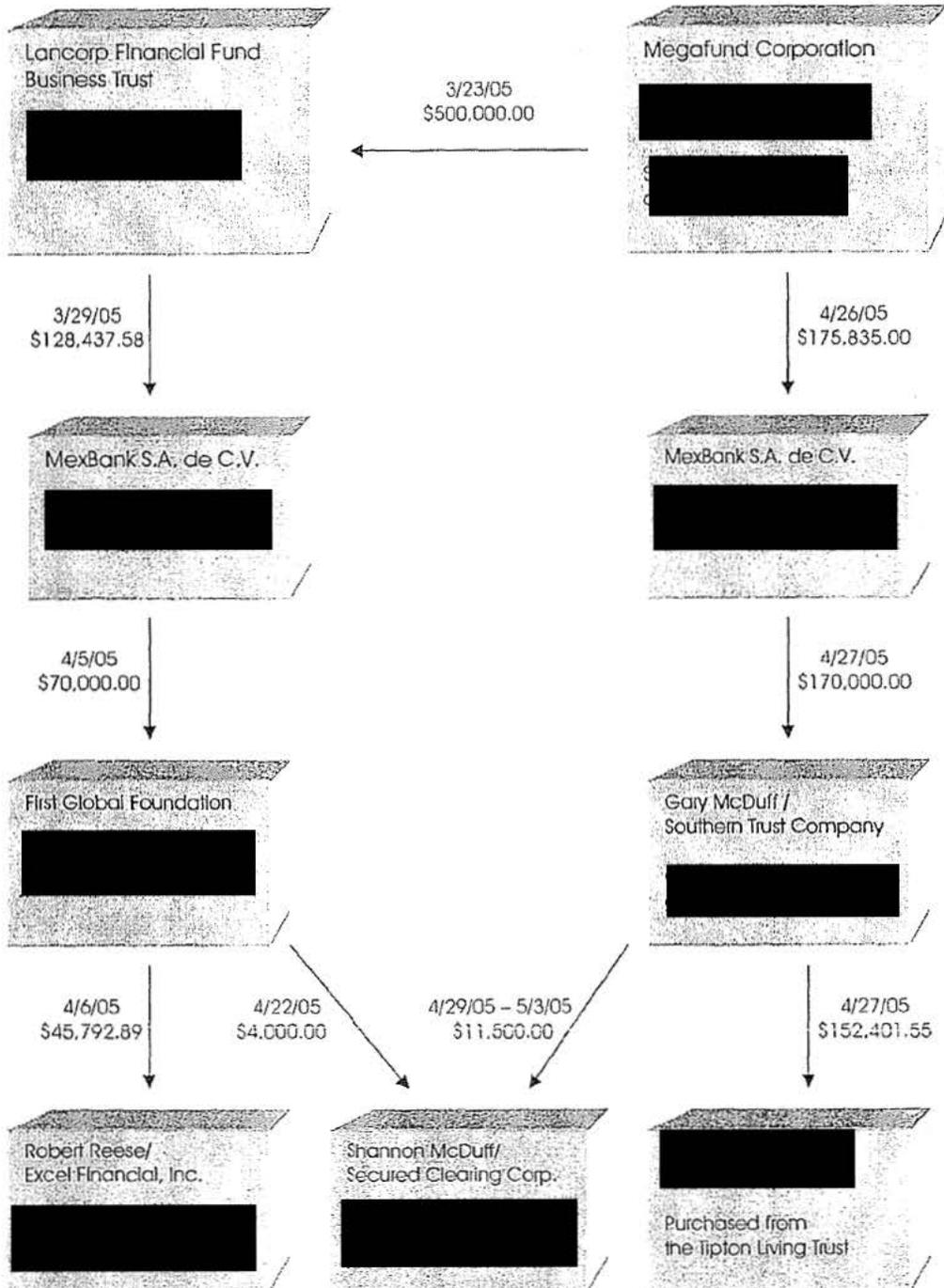


EXHIBIT A-4

EXHIBIT A-5

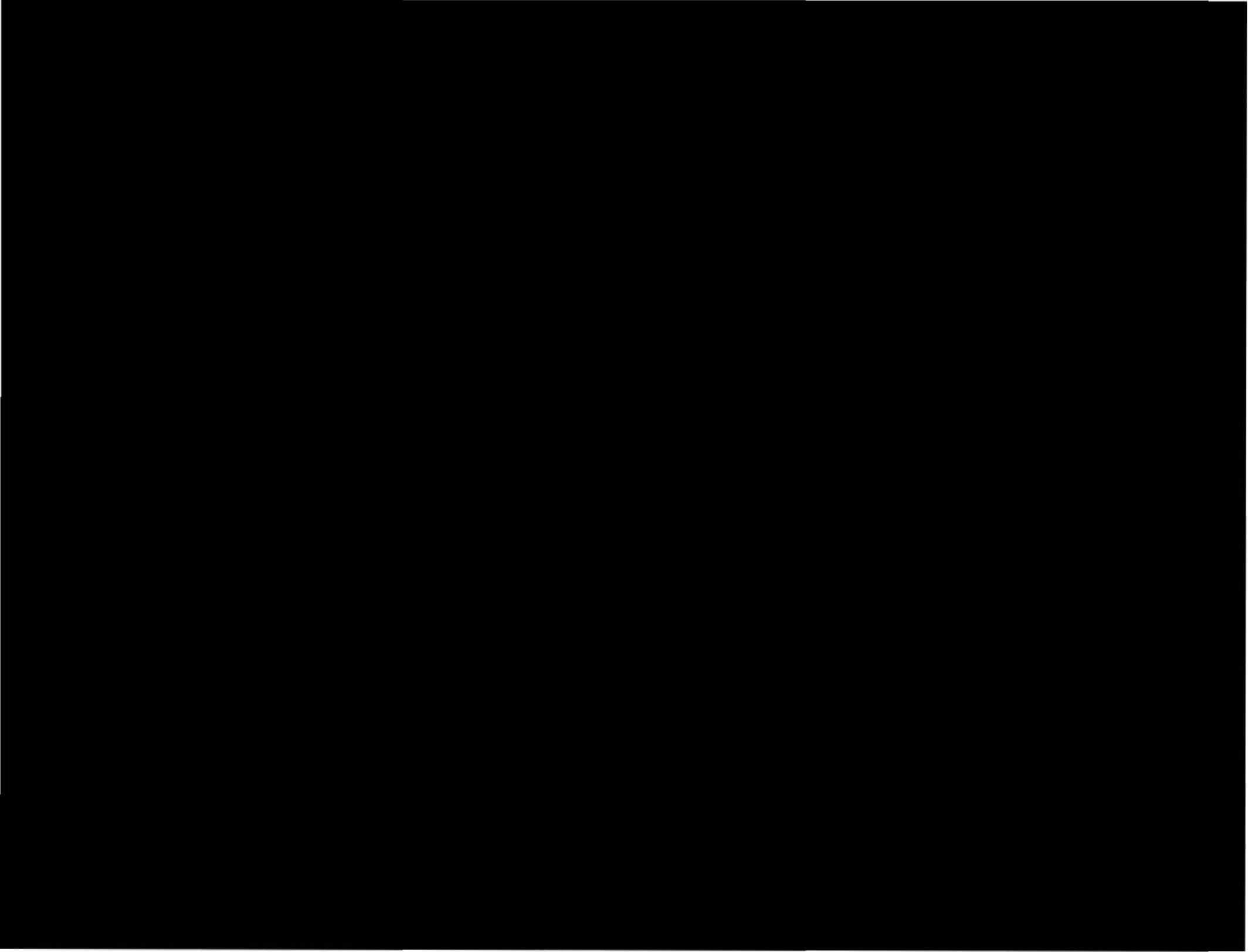


EXHIBIT A-6

EXHIBIT A-7

EXHIBIT A-8

EXHIBIT A-9

EXHIBIT A-10

EXHIBIT A-11

CIVIL ACTION NO. 3:05-CV-1328-L
MEGAFUND CORPORATION RECEIVERSHIP ESTATE

Detail of Cash Receipts and Disbursements
(through April 30, 2008)

RECEIPTS:

Account Closures

Wachovia Bank	851.16	
First United Bank	13,020.18	
Wells Fargo	24,992.60	
Wells Fargo	1,045.49	
Wells Fargo	1,323.89	
National Financial Services	1,259.96	
National Financial Services	3.20	
Interbank FX	4,357.26	
JP Morgan	9,830.01	
Rbtt Bank	<u>26,110.00</u>	\$82,393.55

Distribution from Sardaukar

Interim	1,832,016.24	
Final (Estimated)	<u>384,887.18</u>	2,216,903.42

Asset Sales

Furniture	11,217.80	
Copier	1,200.00	
Equipment	600.00	
Cadillac	49,000.00	
Infiniti	27,000.00	
Eagles Nest Property	341,573.80	
Pecan Meadows Property	286,498.06	
Gentle Drive Property	565,901.66	
Movie	50,000.00	
McDuff House	122,143.51	
Left Behind Games Stock	<u>548.91</u>	1,455,683.74

Miscellaneous

Cash in car	11,000.00	
Cash in offices	95.80	
Jim Rumpf	25,000.00	
TGC Int'l funds	49,000.00	
Cash in house	12.95	
TGC Int'l funds	141.60	
McDuff Account	54.46	
Shannon McDuff	14,885.38	
Sardaukar Estate	<u>4,025.46</u>	104,215.45

CIVIL ACTION NO. 3:05-CV-1328-L
MEGAFUND CORPORATION RECEIVERSHIP ESTATE

Detail of Cash Receipts and Disbursements
(through April 30, 2008)

	City of Deer Park	72.00	
	Comerica Bank	16.00	
	Comerica Bank	4.00	
	Comerica Bank	16.00	
	Comerica Bank	6.00	
	Comerica Bank	6.00	
	Comerica Bank	3.00	
	QSCl	<u>4,025.86</u>	
			8,120.94
Interest			\$25,670.67
	Total Receipts		\$4,081,740.09

**CIVIL ACTION NO. 3:05-CV-1328-L
MEGAFUND CORPORATION RECEIVERSHIP ESTATE**

**Detail of Cash Receipts and Disbursements
(through April 30, 2008)**

DISBURSEMENTS:

Professional Fees

Legal

QSCl	170,023.85	
QSCl	27,504.43	
QSCl	11,823.87	
QSCl	32,197.88	
QSCl	17,748.90	
QSCl	27,822.50	
QSCl	26,839.89	
QSCl	708.83	
QSCl	999.05	
QSCl	1,039.70	
QSCl	51,798.00	
QSCl	700.66	
QSCl	359.54	
QSCl	333.56	
QSCl	905.71	
QSCl	827.77	
QSCl	106.23	
QSCl	805.94	
QSCl	93,575.00	
QSCl	147.73	
QSCl	90.31	
QSCl	844.74	
QSCl	19,491.00	
QSCl	699.83	
QSCl	1,340.69	
QSCl	2,542.59	
QSCl	834.92	
QSCl	22,126.50	
QSCl	500.68	
QSCl	630.63	
QSCl	137.97	
QSCl	<u>697.31</u>	
		\$516,206.21

Accounting

Litzler, Segner	69,232.91	
Litzler, Segner	4,583.00	
Litzler, Segner	<u>1,089.00</u>	
		\$74,904.91

Investigative

Bray & Freeman	2,766.41	
Bray & Freeman	12,599.99	
Bray & Freeman	<u>257.09</u>	
		\$15,623.49

**CIVIL ACTION NO. 3:05-CV-1328-L
MEGAFUND CORPORATION RECEIVERSHIP ESTATE**

**Detail of Cash Receipts and Disbursements
(through April 30, 2008)**

Computer Forensics			
2Xi		10,622.03	
2Xi		<u>24,626.87</u>	
			\$35,248.90
Distribution to Investors		<u>2,500,000.00</u>	
			\$2,500,000.00
House Expenses			
Gentle Drive:			
Atmos Energy		96.95	
Town of Flower Mound (water bill)		536.31	
Massie's Lock & Supply (all houses)		1,008.89	
TXU		1,522.60	
Larry Lyons		416.57	
Town of Flower Mound (water bill)		352.18	
Apex Valuation		450.00	
Leonard Appraisal & Consulting		300.00	
Atmos Energy		30.87	
Wilson Group		250.00	
Wichita Creek HOA		400.00	
Town of Flower Mound (water bill)		202.48	
TXU		620.01	
Atmos Energy		43.84	
Russell Rhodes		520.00	
TXU		295.08	
Town of Flower Mound (water bill)		183.96	
Atmos Energy		41.67	
Larry Lyons		2,500.00	
Town of Flower Mound (water bill)		230.62	
TXU		143.66	
Atmos Energy		474.64	
TXU		241.84	
Town of Flower Mound (water bill)		146.67	
Steve Mossman, Tax Collector		14,258.25	
Atmos Energy		484.61	
Farmers Insurance		853.35	
TXU		124.55	
Town of Flower Mound (water bill)		481.88	
Atmos Energy		258.27	
Farmers Insurance		340.53	
Town of Flower Mound (water bill)		276.43	
TXU		351.88	
Atmos Energy		210.45	
Farmers Insurance		340.53	
TXU		179.93	
Russell Rhodes		2,434.94	
Town of Flower Mound (water bill)		450.43	
Farmers Insurance		340.53	

CIVIL ACTION NO. 3:05-CV-1328-L
MEGAFUND CORPORATION RECEIVERSHIP ESTATE

Detail of Cash Receipts and Disbursements
 (through April 30, 2008)

Atmos Energy	22.35
TXU	319.44
Town of Flower Mound (water bill)	332.62
Atmos Energy	23.55
TXU	223.06
Farmers Insurance	340.53
Town of Flower Mound (water bill)	514.87
Atmos Energy	24.31
TXU	472.83
Town of Flower Mound (water bill)	670.70
Town of Flower Mound (water bill)	101.39
Rhodes & Associates	2,357.00

Eagles Nest:	
Larry Lyons	2,500.00
Barton Water Supply	454.00
Coserv Electric	876.41
Allied Waste	12.15
Apex Valuation	350.00
Leonard Appraisal & Consulting	300.00
Barton Water Supply	176.05
Wilson Group	250.00
Barton Water Supply	816.58
Russell Rhodes	520.00
Coserv Electric	981.01
Coserv Electric	108.00
Barton Water Supply	422.76
Town of Flower Mound (water bill)	154.04
Allied Waste	42.82
Barton Water Supply	154.82
Coserv Electric	398.00
Allied Waste	5.29
Coserv Electric	396.00
Barton Water Supply	103.80
Barton Water Supply	103.80
Russell Rhodes	2,401.14

Pecan Meadows:	
Apex Valuation	350.00
Leonard Appraisal & Consulting	300.00
Wilson Group	250.00
Town of Flower Mound (water bill)	75.00
Russell Rhodes	264.00
Town of Flower Mound (water bill)	2.87
Coserv Electric	212.29
Coserv Electric	162.30
Atmos Energy	150.97
Town of Flower Mound (water bill)	48.34
Coserv Electric	100.81

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

<hr/> SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action:
	:	3:08-CV-526-L
GARY L. McDUFF,	:	ECF
GARY L. LANCASTER, and	:	
ROBERT T. REESE,	:	
	:	
Defendants.	:	
	:	
<hr/>	:	

DECLARATION OF JESSICA B. MAGEE

I, Jessica B. Magee, do hereby declare under penalty of perjury and in accordance with 28 U.S.C. § 1746, that the following is true and correct, that this Declaration is made of my own personal knowledge, and that I am competent to testify as to the matters stated herein.

1. This Declaration is offered in support of the Securities and Exchange Commission’s (“Commission”) *Motion for Default Judgment as to Gary Lynn McDuff and Brief in Support*, filed simultaneously herewith.

2. I am employed as a Trial Attorney by the United States Securities and Exchange Commission (“Commission”) in the Fort Worth Regional Office. I have been employed in this capacity since March 25, 2012, prior to which I was employed as a Commission Enforcement Attorney beginning on March 29, 2010. My official duties with the Commission include representing the Commission in its litigation of securities laws violations.

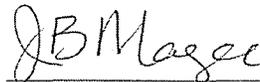
3. I am licensed to practice law in the state of Texas, am a member in good standing of the Texas State Bar, and am admitted to appear before this Court.

4. As part of my official duties, I reviewed the Commission's file in the above-captioned lawsuit as well as this Court's docket.

5. Based on my review of these materials and the Declaration of Michael Quilling, I determined that Defendant Gary Lynn McDuff owes \$136,336.18 in disgorgement, as he received this sum from his fraudulent offering and selling efforts undertaken in connection with the Lancorp and Megafund fraud schemes. I calculated the prejudgment interest on the principal amount of \$136,336.18 using the quarterly interest rate used by the IRS for computation of interest on underpayment of taxes from July 5, 2005, the date established in the Complaint and supporting bank records by which McDuff received his ill-gotten funds. According to that calculation, McDuff is obligated to pay \$65,004.37 in prejudgment interest. Attached hereto as Exhibit 1 is a true, correct, and complete copy of the Prejudgment Interest Report I prepared on behalf of the Commission with regard to McDuff.

Further Declarant Sayeth Not.

Signed this 19th day of February 2013.



Jessica B. Magee

EXHIBIT B-1



U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

SEC v. Gary Lynn McDuff

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$136,336.18
08/01/2005-09/30/2005	6%	1%	\$1,367.10	\$137,703.28
10/01/2005-12/31/2005	7%	1.76%	\$2,429.61	\$140,132.89
01/01/2006-03/31/2006	7%	1.73%	\$2,418.73	\$142,551.62
04/01/2006-06/30/2006	7%	1.75%	\$2,487.82	\$145,039.44
07/01/2006-09/30/2006	8%	2.02%	\$2,924.63	\$147,964.07
10/01/2006-12/31/2006	8%	2.02%	\$2,983.60	\$150,947.67
01/01/2007-03/31/2007	8%	1.97%	\$2,977.60	\$153,925.27
04/01/2007-06/30/2007	8%	1.99%	\$3,070.07	\$156,995.34
07/01/2007-09/30/2007	8%	2.02%	\$3,165.71	\$160,161.05
10/01/2007-12/31/2007	8%	2.02%	\$3,229.55	\$163,390.60
01/01/2008-03/31/2008	7%	1.74%	\$2,843.71	\$166,234.31
04/01/2008-06/30/2008	6%	1.49%	\$2,479.89	\$168,714.20
07/01/2008-09/30/2008	5%	1.26%	\$2,120.45	\$170,834.65
10/01/2008-12/31/2008	6%	1.51%	\$2,576.52	\$173,411.17
01/01/2009-03/31/2009	5%	1.23%	\$2,137.95	\$175,549.12
04/01/2009-06/30/2009	4%	1%	\$1,750.68	\$177,299.80
07/01/2009-09/30/2009	4%	1.01%	\$1,787.57	\$179,087.37
10/01/2009-12/31/2009	4%	1.01%	\$1,805.59	\$180,892.96
01/01/2010-03/31/2010	4%	0.99%	\$1,784.15	\$182,677.11
04/01/2010-06/30/2010	4%	1%	\$1,821.77	\$184,498.88
07/01/2010-09/30/2010	4%	1.01%	\$1,860.15	\$186,359.03
10/01/2010-12/31/2010	4%	1.01%	\$1,878.91	\$188,237.94
01/01/2011-03/31/2011	3%	0.74%	\$1,392.45	\$189,630.39
04/01/2011-06/30/2011	4%	1%	\$1,891.11	\$191,521.50
07/01/2011-09/30/2011	4%	1.01%	\$1,930.96	\$193,452.46
10/01/2011-12/31/2011	3%	0.76%	\$1,462.82	\$194,915.28
01/01/2012-03/31/2012	3%	0.75%	\$1,453.88	\$196,369.16
04/01/2012-06/30/2012	3%	0.75%	\$1,464.72	\$197,833.88
07/01/2012-09/30/2012	3%	0.75%	\$1,491.86	\$199,325.74
10/01/2012-12/31/2012	3%	0.75%	\$1,503.11	\$200,828.85
01/01/2013-01/31/2013	3%	0.25%	\$511.70	\$201,340.55
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
08/01/2005-01/31/2013			\$65,004.37	\$201,340.55

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

**GARY L. McDUFF,
GARY L. LANCASTER, and
ROBERT T. REESE,**

Defendants.

**Civil Action:
3:08-CV-526-L
ECF**

FINAL JUDGMENT BY DEFAULT AS TO DEFENDANT GARY L. MCDUFF

This matter came before the Court on Plaintiff's Motion for Default Judgment As To Defendant Gary L. McDuff, ("McDuff"). The Court, having considered all of the pleadings and evidence in the record, is of the opinion that Plaintiff's Motion should be GRANTED.

The Court, having considered all of the pleadings, records, and proceedings herein, enters the following findings of fact and conclusions of law:

1. The Commission's Complaint was filed on March 26, 2008.
2. McDuff was served with the Summons and Complaint on August 23, 2012 in a manner authorized by the Court. The Commission caused the affidavit of service to be filed with this Court on August 29, 2012. [Doc. No. 34.]
3. McDuff is not an infant or an incompetent person, nor is he currently serving in the United States military. McDuff is not eligible for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix, § 501 *et seq.*].
4. McDuff has not filed an answer to the Commission's Complaint or other required pleading, nor has he taken any action indicating an intent to defend this suit.

5. The United States District Clerk entered a default against McDuff on September 24, 2012. [Doc. No. 38.]

6. The Commission is entitled to entry of a final judgment of permanent injunction against McDuff for violating Section 10(b) of the Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], and aiding and abetting violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and (2)];

7. The district court has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged. Disgorgement need only be a reasonable approximation of profits causally connected to the violation.

8. The Commission has met its burden of presenting evidence reasonably approximating the amount of ill-gotten gains.

9. The appropriate amount of disgorgement to be assessed against Defendant McDuff is the total amount of illicit profits or ill-gotten gains he personally received from his illicit activity. Based upon the evidence and the SEC’s allegations, the Court finds that McDuff violated the federal securities laws, and is ordered to pay disgorgement of all ill-gotten gains totaling \$136,336.18.

10. The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in SEC enforcement actions such as this one. That rate of interest reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendant derived from its fraud.

11. The Commission is entitled to an Order requiring McDuff to pay disgorgement in the amount of \$136,336.18 plus prejudgment interest in the amount of \$65,004.37, representing the proceeds of McDuff's illegal activity as pled by the Commission.

12. A civil monetary penalty against McDuff under Section Section 20(d)(2)(C) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] in the amount of \$_____ is appropriate under the facts and circumstances of this case. These provisions authorize third-tier penalties where the violations involve fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement and such violations directly or indirectly resulted in substantial losses or created a risk of losses to other persons. McDuff's egregious conduct justifies the imposition of third-tier civil penalties.

On the basis of the foregoing findings of fact and conclusions of law:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

I.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77e(a) and (c)] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

- (b) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

II.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], directly or indirectly, in connection with the purchase or sale of a security, by making use of any means or instrumentality of interstate commerce, of the mails or of any facility of any national securities exchange:

- (a) to use or employ any manipulative or deceptive device or contrivance;
- (b) to employ any device, scheme, or artifice to defraud;
- (c) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or
- (d) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IV.

Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], by using the mails or any means or instrumentality of interstate commerce, while acting as a broker or dealer, effecting transactions in or inducing or attempting to induce the purchase or sale of securities while not

registered with the Commission as a broker or dealer or while not associated with an entity registered with the Commission as a broker or dealer.

V.

Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding or abetting, directly or indirectly, Sections 206(1) and 206(2) the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$136,336.18, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$65,004.37, and a civil penalty in the amount of \$_____ pursuant to Section 20(d)(2)(C) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall satisfy this obligation by paying these sums within 14 days after entry of this Final Default Judgment to the Securities and Exchange Commission.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

And shall be accompanied by a letter identifying the case title, civil action number and name of this Court; [Defendant's name] as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Default Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Default Judgment forthwith and without further notice.

SIGNED: _____, 2013

UNITED STATES DISTRICT JUDGE

EXHIBIT K

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

GARY L. McDUFF,

Defendant.

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Civil Action No.: 3:08-CV-526-L

ORDER

Before the court is Plaintiff's Motion for Default Judgment as to Defendant Gary L. McDuff ("McDuff") [Doc. # 39], filed February 19, 2013. The court, having considered all of the pleadings, evidence in the record, and applicable law **grants** Plaintiff's Motion for Default Judgment as to Defendant Gary L. McDuff.

The court makes the following findings of fact and conclusions of law:

1. The Securities and Exchange Commission ("Commission" or "SEC") filed its Complaint on March 26, 2008.
2. McDuff was served with the Summons and Complaint on August 23, 2012, in a manner authorized by the court. The Commission filed the affidavit of service with this court on August 29, 2012 [Doc. # 34].
3. McDuff is not an infant or an incompetent person; nor is he currently serving in the United States military. McDuff is not eligible for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix, § 501 *et seq.*].
4. McDuff has not filed an answer to the Commission's Complaint or other required pleading; nor has he taken any action indicating an intent to defend this suit.

5. The United States District Clerk entered a default against McDuff on September 24, 2012. [Doc. No. 38.]

6. The Commission is entitled to entry of a final judgment of permanent injunction against McDuff for violating Section 10(b) of the Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], and aiding and abetting violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and (2)];

7. The district court has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged. Disgorgement need only be a reasonable approximation of profits causally connected to the violation.

8. The Commission has met its burden of presenting evidence reasonably approximating the amount of ill-gotten gains.

9. The appropriate amount of disgorgement to be assessed against Defendant McDuff is the total amount of illicit profits or ill-gotten gains he personally received from his illicit activity. Based upon the evidence and the SEC’s allegations, the court finds that McDuff violated the federal securities laws, and is ordered to pay disgorgement of all ill-gotten gains totaling **\$136,336.18**.

10. The Internal Revenue Service (“IRS”) underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in SEC enforcement actions such as this one. That rate of interest reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits Defendant derived from his fraud.

11. The Commission is entitled to an order requiring McDuff to pay disgorgement in the amount of \$136,336.18 plus prejudgment interest in the amount of **\$65,004.37**, representing the proceeds of McDuff's illegal activity as pled by the Commission.

12. A civil monetary penalty against McDuff under Section Section 20(d)(2)(C) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] in the amount of **\$125,000** is appropriate under the facts and circumstances of this case. These provisions authorize third-tier penalties when the violations involve fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement and such violations directly or indirectly resulted in substantial losses or created a risk of losses to other persons. McDuff's egregious conduct caused the loss of \$11,000,000 to Lancorp Fund's investors that was never repaid. Further, he failed to admit and take responsibility for his wrongful conduct by failing to answer or otherwise respond in this action. Accordingly, such conduct justifies the imposition of third-tier civil penalties in the amount of \$125,000.

On the basis of the foregoing findings of fact and conclusions of law, the court **grants** Plaintiff's Motion for Default Judgment as to Defendant Gary L. McDuff. The court will enter a default judgment by separate document pursuant to Rule 58 of the Federal Rules of Civil Procedure. The Commission's Motion for Entry of Judgment by Default as to Gary L. McDuff [Doc. # 36], filed September 24, 2012, is **denied as moot**.

It is so ordered this 22nd day of February, 2013.

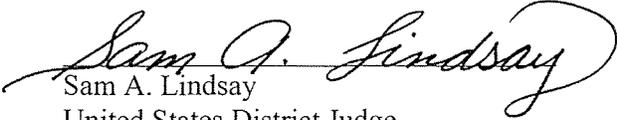

Sam A. Lindsay
United States District Judge

EXHIBIT L

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

GARY L. McDUFF,

Defendant.

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Civil Action No.: 3:08-CV-526-L

FINAL DEFAULT JUDGMENT

Pursuant to its order filed earlier today, the court issues this Final Default Judgment in favor of the Securities and Exchange Commission (“Commission” or “SEC”) and against Gary L. McDuff (“Defendant”). It is therefore, **ordered, adjudged, and decreed** as follows:

I.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77e(a) and (c)] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use

or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

II.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or

indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], directly or indirectly, in connection with the purchase or sale of a security, by making use of any means or instrumentality of interstate commerce, of the mails or of any facility of any national securities exchange:

- (a) to use or employ any manipulative or deceptive device or contrivance;
- (b) to employ any device, scheme, or artifice to defraud;
- (c) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (d) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IV.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], by using the mails or any means or instrumentality of interstate commerce, while acting as a broker or dealer, effecting transactions in or inducing or attempting to induce the purchase or sale of securities while not registered with the Commission as a broker or dealer or while not associated with an entity registered with the Commission as a broker or dealer.

V.

Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Default Judgment by personal service or otherwise are permanently restrained and enjoined from aiding or abetting, directly or indirectly, Sections 206(1) and 206(2) the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

VI.

It is hereby further **ordered, adjudged, and decreed** that Defendant is liable for disgorgement of **\$136,336.18**, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of **\$65,004.37**, and a civil penalty in the amount of **\$125,000** pursuant to Section 20(d)(2)(C) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall satisfy this obligation by paying these sums within 14 days after entry of this Final Default Judgment to the Securities and Exchange Commission.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier’s check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:

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Accounts Receivable Branch
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and shall be accompanied by a letter identifying the case title, civil action number and name of this court; [Defendant's name] as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Defendant shall pay postjudgment interest on the total amount of this Final Default Judgment (**\$326,340.55**) pursuant to 28 USC § 1961 at the applicable federal rate of **.15%** from the date of its entry until it is paid in full.

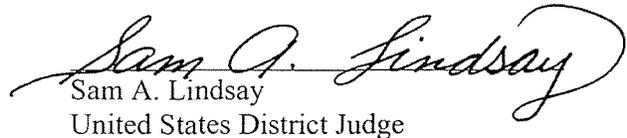
VII.

It is further **ordered, adjudged, and decreed** that this court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Default Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the clerk is ordered to enter this Final Default Judgment forthwith and without further notice. Finally, the clerk is directed to **close** this action.

Signed this 22nd day of February, 2013.


Sam A. Lindsay
United States District Judge